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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 746

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,
Petitioners,

v.

HENRITA TODMAN, Supervisor of Elections,
Respondent.

No.

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands, and RONALD DELUGO, FRITZ LAWAETZ, HERBERT SUGDEN, THOMAS W. GIBBS, ANTHONY CERGE, ALFRED LOCKHART, LUCINDA A. MILLIN, AUGUSTIN DOWARD, FABIAN MARTINEZ, DELTA DORSCH, THEOVALD E. MOOREHEAD, LESLIE MOOREHEAD, CLELY BERRY, CHARLES S. SEBASTIAN, MALDRED J. SHACKELTON (designated "Donkey Group Plaintiffs" for brevity),
Petitioners,

v.

HENRITA TODMAN, Supervisor of Elections; and EARLE B. OTTLEY, EVADNEY PETERSEN, ROY A. ANDUZE, RANDAL N. JAMES, JOHN L. MADURO, FRANK PETERSEN, RUTH E. LABEET, PATRICK N. WILLIAMS, A. DAVID PURITZ, GENEVIEVE THURLAND, AUREO DIAZ, WARREN E. BROWN, PERCIVAL H. REESE, VALDEMAR A. HILL, ALFREDO LIMA, and CHARLES W. TURNBULL (designated "Mortar and Pestle Group" for brevity),
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

WILLIAM H. D. COX
Attorney for the Petitioners
20 Crystal Gade
St. Thomas, Virgin Islands

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

Petitioners,

v.

HENRITA TODMAN, Supervisor of Elections,

Respondent.

No.

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands, *et al.,*

Petitioners,

v.

HENRITA TODMAN, Supervisor of Elections, and EARLE B. OTTLEY, *et al.,*

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioners, Joseph Alexander and Daniel W. Ambrose, respectively President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands, pray that a Writ of Certiorari issue to review the judgments of the United States Court of Appeals for the Third Circuit entered in the above cases on October 21, 1964.

Citations to Opinions Below

The opinions of the District Court of the Virgin Islands printed in the Appendix hereto (p. A-9—A-35) are reported in 231 Fed. Supp. 365 and 231 Fed. Supp. 368. The opinion of the United States Court of Appeals printed in the Appendix hereto (p. A-39—A-70) is reported in 336 Fed. 2d .

These cases were tried together upon a stipulation of the respective attorneys and approved by the Judge of the District Court of the Virgin Islands, Judge Walter A. Gordon.

Jurisdiction

The judgment of the Court of Appeals was entered on October 21, 1964. A timely petition for a re-hearing was denied on November 10, 1964. The jurisdiction of this Court is invoked under Title 28 U.S.C. 1254(1).

Questions Presented

1. Whether the enrollment of the Mortar and Pestle defendants who were prominent in and leaders of the Unity Party, one of two major political parties in the Virgin Islands, in the Democratic Party, the other major political party, in accordance with and in furtherance of a plan conceived and developed by Unity Party leaders for the purpose of taking over control of the Democratic Party of the Virgin Islands, expelling its existing members and establishing a one party system of government in the Virgin Islands, was a bona fide enrollment.

2. Whether the issuance of an injunction against an organized, concerted scheme by one political party to

destroy another political party required proof that each individual participating in such scheme hold political views antagonistic to the views of the party that they concertedly sought to destroy.

3. Whether the test of good faith of the Mortar and Pestle defendants so enrolling is to be determined solely on the basis of whether their principles are antithetical to those of the Democratic Party without considering:

(a) Their past party affiliation;

(b) Their motive in enrolling in the party; and

(c) Their conduct thereafter.

4. Whether under Rule 52 of the Federal Rules of Civil Procedure the United States Court of Appeals is not bound by the trial judge's findings on mediate facts and his conclusion when such findings of the trial judge are amply supported by the evidence adduced at the trial.

Statutes Involved

The statutory provisions involved are Title 18 of the Virgin Islands Code, and particularly Sections 301 (a) (b) (c) (f) (i), 302, 303, 304, 307 and 344.

Title 18 V.I.C., Section 301 (a) (b) (c) (f) (i), Vol. 3A, p. 131:

> "(a) By an official publication in all the local newspapers during the first week in April, 1963 the Supervisor of Elections shall request the filing in his office of the names of political parties which shall be recognized by law. The publication shall shall be made for a period of ten days.
>
> (b) The name of any political party presently organized in the Virgin Islands which in fact sup-

ported specific candidates at the General Election held in 1962 may be filed by a simple petition to be prescribed by the Supervisor of Elections signed by the President and Secretary of said party.

(e) The name of a political party may also be filed by a simple petition to be prescribed by the Supervisor of Elections and signed by not less than 100 electors of the Virgin Islands.

(f) There shall be no similarity in the names of political parties which would tend to confuse or mislead the electors when voting in primaries or general elections. In cases where the same word or words, other than the words, 'Virgin Islands' appear in the petition filed for more than one political party, the Supervisor of Elections shall hold a hearing to determine which petition shall be accepted, giving due consideration to the hour each petition was filed, the number of electors signing each petition, and whether such party was officially in existence and participating in general elections in the Virgin Islands prior to the effective date of this chapter. * * *

(i) * * * However, beginning with the year 1966 such a political body may be declared a political party if at the general elections next preceding the primaries one of its candidates for election in the territory at large should poll not less than 5 per centum of the total number of valid ballots cast in the territory."

Title 18 V.I.C., Section 302, Vol. 3A, p. 133, the pertinent part of which reads:

"Each elector shall be eligible to enroll as a member of the recognized party of his or her choice, by subscribing to support the policies of said party. * * *"

Title 18 V.I.C., Section 304 (a), Vol. 3A, p. 135, the pertinent part of which reads:

> "• • • The territorial committee of each political party shall make such rules for the government of the party in the territory that are not inconsistent with law, which it may deem expedient. • • •"

Title 18 V.I.C., Section 307, Vol. 3A, p. 136:

> "If the number of candidates who filed nomination petitions for a particular party office exactly equals the number of persons who are to be elected to such office, no party primary with respect to such office shall be held, and, in such a case, the Supervisor of Elections shall declare the candidates who filed the petitions to be elected to such party office."

Statement

Jurisdiction of the District Court of the Virgin Islands, which is a territorial court, was invoked because the cause of action arose within that jurisdiction.

The two cases involved here which were heard together, involve an appeal to the District Court of the Virgin Islands from the refusal of the Supervisor of Elections to hold a hearing to permit the Democratic Party to show that the Unity Party, contrary to Section 301 (f), enrolled itself under the name of the Democratic Party. In the second action which contests the good faith of the enrollment of the Mortar and Pestle group in the Democratic Party, she merely appears as a necessary defendant to make her subject to the order of the court.

On January 1, 1963, there were two major political parties in the Virgin Islands: the Democratic Party of the Virgin Islands, whose four clubs had an enrollment of 1300 members, and the Virgin Islands Unity Party,

whose four clubs had a total enrollment of 1000. There were three minor parties in the Virgin Islands: the Republican Party, the Virgin Islands Party and the Virgin Islands Popular Vanguard Party.

The Democratic Party had been in existence and had functioned as a political party for over thirty years; the Unity Party came into existence in 1954 and functioned as a political party thereafter.

Thereafter, in the biennial elections for Senators to the uni-cameral Legislature (the only elective office in the Virgin Islands), each of these parties supported its candidates in their campaign for election. In the election of 1962, the Unity Party elected six of the eleven Senators and the Democratic Party elected five.

During the month of February, 1963, the Legislature enacted the present election code, Virgin Islands Code, 3A, Title 18, pp. 83 to 207. This code provided for registration of political parties in the Virgin Islands for the first time (Sections 301 (a) (b) (c)) and also provided for the enrollment of electors in political parties (Section 302). The Democratic Party registered itself with the Supervisor of Elections in accordance with Section 301 (b) on April 19, 1963.

The Democratic Party of the Virgin Islands was recognized by the National Democratic Party in the United States, and participated in the National Party's conventions.

The leaders of the Unity Party in order to advance their party and its leaders and to gain for the party affiliation with a National party, conceived, developed and carried out a scheme to take over control of the Democratic Party, to destroy that party and to establish a one party system in the Virgin Islands.

In furtherance of this scheme conceived by the Unity Party leaders, they took the following steps as found by Judge Gordon in his decision (A-18—A-35):

(a) In January, 1963, they changed the name of the party to the Unity-Democratic Party and the names of their clubs accordingly;

(b) They concealed from their members that they were not going to register the Unity Party as a political party, thereby preventing their members from registering the party;

(c) In April, 1963, the leaders of the Unity Party held a strategy meeting at which it was decided to circulate a petition among the officers, executive committee and those close to the Unity Party to register the Democratic Party of the Virgin Islands under Section 301 (c), and thereafter, beginning with the opening of enrollment, to enroll as members of the Democratic Party. This petition they withheld until the last day and the last hour of that day for registering political parties, filing their petition about 3 p.m. on May 1, 1963;

(d) At a general meeting of the Unity-Democratic Party in St. Thomas on the evening of May 1, 1963, they attempted to dissolve the Unity-Democratic Party without notice to their membership that the dissolution of the party would be voted upon. Although served with a demand that they produce the minutes of that meeting, they were unable to do so; and from the testimony it appeared that the minutes had never been transcribed by the secretary. The secretary was not called as a witness to show that this issue ever came up to be voted upon. Judge Gordon found from the facts that the Unity Party was never dissolved, although their candidates stated publicly that it had been dissolved and urged all members of the Unity Party to enroll in the Democratic Party so that they could vote for them for the Territorial Committee;

(e) They filed a slate of nominees for the Territorial Committee of the Democratic Party of the Virgin Islands composed of their leaders to run in the primary election on November 1, 1963, and chose as the symbol for these candidates the Mortar and Pestle, which was the symbol of the Unity-Democratic Party;

(f) They made it clear to the public by news releases, radio and television speeches that they considered themselves a separate entity, distinct and apart from the Democratic Party who had nominated candidates for its Territorial Committee under the symbol of the Donkey. They stated repeatedly during the campaign that it was their purpose to take over and control the Democratic Party of the Virgin Islands;

(g) In the primary, they elected sixteen out of twenty-two members to the Territorial Committee of the Democratic Party in a close election; and upon organizing, adopted a rule of procedure providing that all Democratic clubs in existence as of November 8, 1963, were abolished, and providing further that no Democratic club could be formed except by petition to and the approval of the Territorial Committee so elected.

The action originally brought against Mrs. Todman and the twenty-two defendants herein referred to as the Mortar and Pestle group for brevity, asked that the holding of the primary of November 1, 1963, be enjoined. Judge Gordon did not enjoin the holding of the primary.

Thereafter, by amendment to the complaint the court was asked to enjoin the sixteen Unity Party members of the Territorial Committee from acting as members of the Territorial Committee of the Democratic Party and for other relief set forth therein.

The six members of the Donkey slate elected never took any part in the Territorial Committee as certified by the Supervisor of Elections. The Democratic Party met and voted to recognize the Donkey slate as its Territorial Committee, claiming that the Unity Party members elected were guilty of fraud, collusion and conspiracy as is set forth in their complaint.

The case proceeded to trial on the amended complaint and on July 20, 1964, Judge Gordon handed down his Findings of Fact (A-10—A-14) and his Opinion (A-18—A-35) and entered judgment thereon, holding that the enrollment of the Mortar and Pestle candidates as Democrats was fraudulent and that they were actually members of the Unity Party seeking election to the Territorial Committee of the Democratic Party.

The Mortar and Pestle defendants then appealed the case to the United States Court of Appeals for the Third Circuit, which reversed Judge Gordon's decision for the reasons stated in their Opinion (A-38—A-70) on October 21, 1964.

This appeal to the Third Circuit was a hurried appeal, that court giving each side but ten days to write their brief, have it printed and filed.

The Third Circuit ordered that the appeal be had on three typewritten copies of the testimony filed with it so that the pertinent parts of the testimony do not appear in any appendix.

Reasons for Granting the Writ

1. So far as can be ascertained from the library facilities in the Virgin Islands, the questions in this case have never been passed upon by the United States Supreme

Court or any other Federal court other than the opinion of the United States Court of Appeals for the Third Circuit.

2. The Opinion of the United States Court of Appeals for the Third Circuit is contrary to the decisions pertaining to similar facts rendered by the courts of New York, including the Court of Appeals of the State of New York.[1]

3. The decision of the United States Court of Appeals, Third Circuit, laid down as the sole test whether or not the principles of the invaded party were intellectually antagonistic to the principles of the invading party without taking into consideration the principles of the invaders before enrolling in the Democratic Party; the fact that the enrollment was in accordance with a scheme by the invaders to take over the Democratic Party of the Virgin Islands and thereby establishing a one party government in the Virgin Islands,[2] and the actions of the invaders

1. Cases of: *In Re Mendelsohn,* 197 Misc. 993, 99 N. Y. Supp. 2d, 438 (affirmed by the Court of Appeals of New York on trial judge's written memorandum, 94 N.E. 2d, 254); *Werbel* v. *Gernstein,* 191 Misc. 275, 78 N. Y. Supp. 2d, 440, 443; *Zuckman* v. *Donahue,* Ed. N. Y. Supp. 2d, 698; *Ingersoll* v. *Heffernan,* 71 N. Y. Supp. 2d, 687; *In Re Newkirk,* 259 N. Y. Supp. 434.

2. By amendment to the Election Code of the Virgin Islands passed April 2, 1964, (18 V.I.C., 3A, Supp. p. 17) set forth in full in the Appendix (A-71), it is provided that where no candidate of a political party running at large receives five percent or more of the vote cast in a general election, it ceases to be a political party.

In the election held on November 3, 1964, no candidate of the Republican Party, the Virgin Islands Party or the Virgin Islands Popular Vanguard Party received five percent of the votes cast, thereby eliminating them as political parties in the Virgin Islands. eliminating them as political parties in the Virgin Islands.

Under the decision of the Third Circuit Court, the Democratic Party, as it existed in 1963, is no longer a political party.

Footnote 34 of the Third Circuit's opinion (A-66) tries to avoid its consequence in an unrealistic way. It states that the Democratic Party, the plaintiff in these actions, have candidates running as independent candidates in the November, 1964, general election. The opinion overlooks the fact that, by its decision, it enjoins the very group who have held the plaintiff Democratic Party together from further acting for the plaintiff Democratic Party.

after enrolling in the Democratic Party. This decision of the United States Court of Appeals would apply to all similar situations not only in the Virgin Islands, but in the continental United States.

4. The opinion of the United States Court of Appeals for the Third Circuit could lead to the establishment of a one party system of government in the United States, as it has in the Virgin Islands.

5. The decision of the Third Circuit Court stating categorically that it is not bound by the findings of the trial judge as to medial facts and the final conclusion of the trial judge is an unwarranted enlargement of the Federal Rule of Civil Procedure 52. The cases cited by the Third Circuit in their footnote 31[3] are all cases where the conclusion of the trial judge was unsupported by evidence or was clearly erroneously under the evidence. In this case the medial facts and the conclusions of the trial court are amply supported by the evidence.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM H. D. COX,
Attorney for the Petitioners.

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3. See *Sears, Roebuck and Co.* v. *Johnson*, 219 F. 2d 590, 591 (3 Cir. 1955); *Automotive Devices Co.* v. *Automotive Devices Co. of Pa.*, 292 F. 2d 663, 664 (3 Cir. 1961); *Surgical Service, Inc.* v. *Adler*, 321 F. 2d 536, 539 (3 Cir. 1963).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

Petitioners,

v.

HENRITA TODMAN, Supervisor of Elections,

Respondent.

No.

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively President and Ssecretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands, *et al.*,

Petitioners,

v.

HENRITA TODMAN, Supervisor of Elections, and EARLE B. OTTLEY, *et al.*,

Respondents.

Statement

In the appeal to the United States Court of Appeals for the Third Circuit, in order to insure a prompt hearing of the appeal, three copies of the transcript of the testimony were filed with the United States Court of Appeals

and the testimony referred to in the Statement of Facts and the Counter Statement of Facts refers to pages in these transcripts of the testimony.

The testimony was taken by two court reporters: one Anderson, and one Hurley. References to the testimony taken by Anderson are designated in the Counter Statement of Facts as "A" followed by the page and line number. That taken by Hurley was designated "H" followed by the page and line number.

All references to pages in the Statement of Case by the appellants refers to testimony taken by Hurley.

Judgment of District Court of the Virgin Islands Civil No. 158—1963

IN THE DISTRICT COURT OF
THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

JOSEPH ALEXANDER, and DANIEL W. AMBROSE, respectively, President and Secretary of The DEMOCRATIC PARTY of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

Plaintiff-Appellant,

v.

HENRITA TODMAN, Supervisor of Elections,

Defendant-Respondent.

An appeal having been timely filed in this Court by the Plaintiff-Appellant from a refusal of the Defendant-Respondent, Henrita Todman as Supervisor of Elections, to hold a hearing to permit the Plaintiff-Appellant to challenge the validity of a certain petition filed in her office on May 1, 1963 and signed by one hundred sixty-five (165) electors on the ground that the said petition was actually filed by and on behalf of the Unity Party in an attempt to register itself under the name of The Democratic Party of the Virgin Islands; and

The appeal having been joined with Civil No. 260-1963 and heard by this Court on March 17 through March 20, 1964; and

The Court having found that the said petition filed on May 1, 1963 and signed by one hundred sixty-five (165)

electors was a part of a fraudulent scheme of the Unity Party to take over the control of the Democratic Party of the Virgin Islands, an independant political organization which had no connection or association with the Unity Party; and

The Court having made its Findings of Fact and Conclusions of Law on the 17th day of July, 1964; it is the

JUDGMENT OF THE COURT on this 20th day of July, 1964, that the petition filed with the Supervisor of Elections on May 1, 1963 signed by one hundred sixty-five (165) electors is hereby declared to be a nullity and of no legal effect giving no right to the Unity Party or the members of such party; and it is the

FURTHER JUDGMENT OF THE COURT that the Supervisor of Elections be and she is hereby ordered to hold and declare the said petition filed with her as Supervisor of Elections on May 1, 1963 a nullity and of no legal effect and to remove the same from her records; and it is the

FURTHER JUDGMENT OF THE COURT that the Supervisor of Elections shall certify the slate of candidates filed by the Democratic Party of the Virgin Islands, plaintiff herein, on May 17, 1963 as the Territorial Committee of the Democratic Party of the Virgin Islands.

Dated: July 20, 1964

/s/ .....
Walter A. Gordon
Judge

Judgment of District Court of the Virgin Islands
Civil No. 260—1963

IN THE DISTRICT COURT OF
THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively, President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

Plaintiffs,

vs.

HENRITA TODMAN, Supervisor of Elections, and EARLE B. OTTLEY, EVADNEY PETERSEN, ROY A. ANDUZE, RANDAL N. JAMES, JOHN L. MADURO, FRANK PETERSEN, RUTH E. LABEET, PATRICK N. WILLIAMS, A. DAVID PURITZ, GENEVIEVE THURLAND, AUREO DIAZ, WARREN E. BROWN, RENHOLDT JACKSON, GERALD M. CHRISTIAN, CLARENCE A. HEYLIGER, MARIO N. DECHABERT, PERCIVAL H. REESE, VALDEMAR A. HILL, ALFREDO LIMA, CHARLES W. TURNBULL, HERMAN F. SMITH and JARVIS B. ABRAMSON, hereinafter referred to as the MORTAR AND PESTLE GROUP for brevity,

Defendants.

This matter having come regularly on for trial before the Court and having been heard by the Court on March 17 through March 20, 1964; and

The Court having filed its Memorandum Opinion on the 17th day of July, 1964; it is the

Judgment of District Court of the Virgin Islands
Civil No. 260—1963

JUDGMENT OF THE COURT that the Defendants, Earle B. Ottley, Evadney Petersen, Roy A. Anduze, Randal N. James, John L. Maduro, Frank Petersen, Ruth E. LaBeet, Patrick N. Williams, A. David Puritz, Genevieve Thurland, Aureo Diaz, Warren E. Brown, Renholdt Jackson, Gerald M. Christian, Clarence A. Heyliger, Mario N. deChabert, Percival H. Reese, Valdemar A. Hill, Alfredo Lima, Charles W. Turnbull, Herman F. Smith and Jarvis B. Abramson, and each of them are hereby enjoined from:

a. Acting as a member or members of the Territorial Committee of the Democratic Party of the Virgin Islands, representing themselves or any one of them to the public as a member or members of the Territorial Committee of the Democratic Party of the Virgin Islands.

b. Passing any rule or rules, regulation or regulations or forming any procedures or constitution for the Democratic Party of the Virgin Islands.

c. Acting pursuant to any rule or rules, procedures or regulations heretofore adopted by the Defendants or any of them as rules, procedures or regulations of the Democratic Party of the Virgin Islands or enforcing such rules, procedures or regulations against the Democratic Party of the Virgin Islands.

d. Electing officers, National Committeeman or National Committeewoman and delegates on behalf of the Democratic Party of the Virgin Islands or the appointment of committees as committees of the

Territorial Committee of the Democratic Party of the Virgin Islands.

e. Establishing clubs or branches or territorial divisions of the Democratic Party of the Virgin Islands.

f. Promulgating rules, regulations or by-laws or participating in the promulgation thereof for the Democratic Party of the Virgin Islands.

g. Holding any function or functions, program or programs under the name of the Democratic Party of the Virgin Islands or under the name of any of its four clubs, to wit: The St. John Democratic Club, The St. Thomas Democratic Club, The Christiansted Democratic Club and the Frederiksted Democratic Club.

h. Interfering in any manner with the Territorial Committee of the Democratic Party of the Virgin Islands composed of Ronald deLugo, Joseph Alexander, Fritz Lawaetz, Herbert Sugden, Thomas W. Gibbs, Anthony Cerge, Alfred H. Lockhart, Lucinda A. Millin, Augustin Doward, Fabian Martinez, Delta Dorsch, Theovald E. Moorehead, David Hamilton, Theodore Brown, Calvin Burke, Stephanos O'Reilly, Leslie Moorehead, Clely Berry, Charles S. Sebastien, Maldred J. Shackelton, Albert Sewer and Elroy Sprauve.

i. Nominating any candidate or candidates for elective office under or to be designated by the name of the Democratic Party of the Virgin Islands; and it is the

Judgment of District Court of the Virgin Islands
Civil No. 260—1963

FURTHER JUDGMENT OF THE COURT that any actions taken by and any rules or procedures passed by the Territorial Committee of the Democratic Party of the Virgin Islands under the leadership of the defendants is hereby declared null and void and not binding upon the Democratic Party of the Virgin Islands, plaintiff herein; and it is the

FURTHER ORDER OF THE COURT that the defendants' Counterclaim is hereby dismissed; and it is the

FURTHER JUDGMENT OF THE COURT that the said Henrita Todman strike from her records the petition filed by the more than 100 electors on May 1, 1963; and that she recognize and certify the following persons as the Territorial Committee of the Democratic Party of the Virgin Islands: Ronald deLugo, Joseph Alexander, Fritz Lawaetz, Herbert Sugden, Thomas W. Gibbs, Anthony Cerge, Alfred H. Lockhart, Lucinda A. Millin, Augustin Doward, Fabian Martinez, Delta Dorsch, Theovald E. Moorehead, David Hamilton, Theodore Brown, Calvin Burke, Stephanos O'Reilly, Leslie Moorehead, Clely Berry, Charles S. Sebastien, Maldred J. Shackelton, Albert Sewer and Elroy Sprauve; and that she remove from her records all rules and procedures and any and all other documents filed by the Defendants herein or by any of them or on their behalf; and that she give no further recognition to the Defendants herein as the Territorial Committee of the Democratic Party of the Virgin Islands.

/S/

Walter A. Gordon
Judge

Dated: July 20, 1964

Background Statement of District Court of the Virgin Islands—Civil No. 158—1963

IN THE DISTRICT COURT OF
THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

CIVIL NO. 158—1963

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively, President and Secretary of The DEMOCRATIC PARTY of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

Plaintiff-Appellant,

v.

HENRITA TODMAN, Supervisor of Elections,

Defendant-Respondent.

BACKGROUND STATEMENT

This civil action is an appeal by the plaintiff-appellant (hereinafter called the plaintiff) pursuant to 18 Virgin Islands Code §301 (f) from the refusal of the defendant-respondent (hereinafter called the defendant), Henrita Todman, as Supervisor of Elections, to grant a hearing to the plaintiff where they could show that a petition purporting to register the Democratic Party of the Virgin Islands, was filed by the Virgin Islands Unity-Democratic Party for the purpose of registering that party under the name of the Democratic Party of the Virgin Islands. This civil action, Civil No. 158-1963, by order of the Court

dated March 13, 1964 was consolidated for trial with Civil No. 260-1963 which case involved similar questions of fact. These consolidated cases came on for trial before this Court without a jury on March 17, 18, 19, and 20, 1964. The plaintiff was represented by Cox and Bornn (William H. D. Cox, Esq. of counsel) of Charlotte Amalie, Virgin Islands. The defendant was represented by Antoinne L. Joseph, Esq. of Frederiksted, Virgin Islands and Shea and Gardner (Alfred L. Scanlan, Esq. of counsel) of Washington, D. C. The Court heard testimony of many witnesses and arguments of counsel and on March 20, 1964 took the matter under advisement. The Court has reviewed the testimony of all the witnesses, the vast number of exhibits and has done considerable legal research in this matter and makes the following:

FINDINGS OF FACT

1. The Democratic Party of the Virgin Islands, the plaintiff herein, and hereinafter called the Democratic Party, is an organized, unincorporated political party affiliated with the National Democratic Party in the United States and has been in existence in the Virgin Islands for a period in excess of thirty years. During its existence it has done the following:

a. It has sponsored and supported candidates running for public office.

b. It has financially assisted candidates running for public office.

c. It has used the various news media to set forth the political philosophies of those candidates

it supported for public office and the philosophy of the Democratic Party of the Virgin Islands.

d. It has participated in the various conventions of the National Democratic Party in the United States by sending a National Committeeman and National Committeewoman, as well as delegates to the National Conventions.

e. It has encouraged membership, which approximates 1300, in its clubs which are affiliated with it and has created a membership which has accepted the principles and political philosophy of the Democratic Party.

2. Since the year 1954, there has been organized in the Virgin Islands an unincorporated political party known as the Virgin Islands Unity Party, later known as the Virgin Islands Unity-Democratic Party, hereinafter called the Unity Party. Said Unity Party had no affiliation with any national political party in the United States. During its existence it has done the following:

a. It has sponsored and supported candidates for election to public office.

b. It has financially assisted candidates running for public office.

c. It has used the various news media to set forth the political philosophies of those candidates it supported for public office and the philosophy of the Unity Party.

d. It has encouraged membership which approximates 1,000 in its clubs which are affiliated with

it and has created a membership which has accepted the principles and political philosophy of the Unity Party.

e. It has worked hard to advance the principles of the party, said principles not being the same as those of the Democratic Party.

3. The defendant, Henrita Todman, was duly appointed by the Virgin Islands Legislature as Supervisor of Elections pursuant to 18 Virgin Islands Code §4 in early April, 1963.

4. The defendant, as required by Section 301 (a), Title 18 Virgin Islands Code, caused to have published in all the local newspapers during the first week of April, 1963 a request for the filing in her office of the names of political parties to be recognized by law.

5. The plaintiff herein registered its party pursuant to Section 301 (b), Title 18 Virgin Islands Code, on April 19, 1963 which petition was approved by the Supervisor of Elections, the defendant herein.

6. During the month of April, 1963, the Unity Party caused a petition to be circulated among its members which was signed by approximately one hundred sixty five (165) qualified voters, the vast majority of whom were members of the Unity Party, to register the Democratic Party of the Virgin Islands.

7. On the afternoon of May 1, 1963 at 2:55 P.M., the Unity Party with full knowledge, approval, and consent of its officers and executive committee, some of whom signed said petition, filed a petition signed by one hun-

dred sixty five (165) qualified voters, the vast majority of whom were its members, with the Supervisor of Elections pursuant to Section 301 (c), Title 18 Virgin Islands Code, registering the Unity Party under the name of the Democratic Party of the Virgin Islands.

8. The plaintiff made a request in writing which was received by the defendant on May 6, 1963 as provided for by Section 301 (f), Title 18 Virgin Islands Code, that the Supervisor of Elections hold a hearing to permit it to prove that the petition filed on May 1, 1963 was filed by the Unity Party in order to register itself under the name of the Democratic Party of the Virgin Islands.

9. On May 13, 1963, the defendant wrote a letter to the plaintiffs where she advised the plaintiffs that:

> "I was of the opinion since May 1st at 4:00 P.M., when all petitions could have been filed under the provisions of Title 18, Chapter 15, Section 301 of the Virgin Islands Code, that there were four recognized political parties and that although five petitions had been filed it was not necessary to hold a hearing as provided for in Section 301 (f). This conclusion was arrived at after reading the *entire* Section 301." (Paragraph omitted.)
>
> "This letter, therefore, is to advise you that the Supervisor of Elections has recognized four political parties and that no hearing will be held on the subject mentioned in the last paragraph of your letter". [Plaintiff's Exhibit No. 24.]

Background Statement of District Court of the Virgin Islands—Civil No. 158—1963

10. Again on June 5, 1963, the plaintiff wrote to the defendant repeating their demand for a hearing. They informed the defendant that:

> "However, since May 13, 1963 certain facts have become known, which I believe would have caused you to rule otherwise, had they been known and as a result of which there should be a hearing held by you." [Plaintiff's Exhibit No. 25.]

11. By letter dated June 10, 1963, the plaintiffs were advised by the defendant that:

> "Your letter adds nothing new which causes me to change the opinion expressed in my letter to you of May 13, 1963. • • •" [Plaintiff's Exhibit No. 26.]

12. The plaintiffs on June 12, 1963 noted an appeal to this Court pursuant to 18 Virgin Islands Code §301 (f), said appeal being from the defendant's refusal to hold a hearing.

13. The defendant testified at the trial of this matter that she was of the opinion that the Unity Party had not registered and was of the opinion that a hearing should be held only if she denied anyone the right to petition. It was her interpretation of Section 301 (f) that if two parties registered under the same name and she denied one petition, it was at this time she would be compelled to hold a hearing. She further testified that she knew of the political affiliation of some of the people who filed the May 1, 1963 petition and that those persons belonged to the Unity Party.

Background Statement of District Court of the Virgin Islands—Civil No. 158—1963

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The appeal filed by plaintiff on June 12, 1963 was timely filed, the plaintiff having been notified by letter on June 10, 1963 that the defendant had made a final denial of the plaintiff's request for a hearing.

2. The Democratic Party of the Virgin Islands, plaintiff herein, validly registered itself with the Supervisor of Elections by the petition filed by its President and Secretary on April 19, 1963, pursuant to 18 Virgin Islands Code §301 (b).

3. The candidates for the Territorial Committee of the Democratic Party of the Virgin Islands nominated by the plaintiff were validly nominated by the plaintiff in accordance with law.

4. The plaintiff, the Democratic Party of the Virgin Islands, as a well established party with many members any many adherents over the period of years of its existence, is entitled to the use of its name as against all other political parties, groups and associations.

5. There having been two petitions filed with the Supervisor of Elections using the same name, the Supervisor of Elections was compelled pursuant to 18 Virgin Islands Code §301 (f) to hold a hearing to determine which petition should have been accepted.

18 Virgin Islands Code §301 (f)

"There shall be no similarity in the names of political parties which would tend to confuse or

mislead the electors when voting in primaries or general elections. In cases where the same word or words, other than the words, 'Virgin Islands' appear in the petition filed for more than one political party, the Supervisor of Elections shall hold a hearing to determine which petition shall be accepted, giving due consideration to the hour each petition was filed, the number of electors signing each petition, and whether such party was officially in existence and participating in general elections in the Virgin Islands prior to the effective date of this chapter. The Supervisor of Elections shall, following such hearing, make a public announcement of his decision. Any association, club, group, organization or instrumentality whose petition is not accepted by the Supervisor of Elections may file an appeal with the District Court not later than seven days after the announcement of such decision for review of the same. Upon such appeal, the District Court may affirm, modify or reverse the decision of the Supervisor of Elections and may declare which of the original petitions filed is to be accepted."

6. The court pursuant to 18 Virgin Islands Code §301 (f) may affirm, modify, or reverse the decision of the Supervisor of Elections and may declare which of the original petitions filed is to be accepted.

7. The court concludes from all the evidence that the plaintiff had the sole right to register the Democratic Party of the Virgin Islands and to nominate a slate of

candidates for its Territorial Committee for certification by the Supervisor of Elections and that the petition filed April 19, 1963 was the only valid registration of the Democratic Party of the Virgin Islands, plaintiff herein.

8. The petition filed by the Unity Party on May 1, 1963 was invalid and should have been rejected by the Supervisor of Elections and any action taken by the Supervisor of Elections pursuant to the petition filed May 1, 1963 is null and void.

9. The Supervisor of Elections should have certified the slate of candidates filed by the plaintiff on May 17, 1963 at 3:30 P.M. [Plaintiff's Exhibit No. 28] for its Territorial Committee pursuant to 18 Virgin Islands Code §307, which states:

> "If the number of candidates who filed nomination petitions for a particular party office exactly equals the number of persons who are to be elected to such office, no party primary with respect to such office shall be held, and, in such a case, the Supervisor of Elections shall declare the candidates who filed the petitions to be elected to such party office.—Added Feb. 20, 1963, No. 936, §1"

Dated: July , 1964

/S/ .....
Walter A. Gordon
Judge

Memorandum Opinion of District Court of the Virgin Islands—Civil No. 260—1963

IN THE DISTRICT COURT OF
THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

CIVIL NO. 260—1963

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively, President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

Plaintiffs,

v.

HENRITA TODMAN, Supervisor of Elections, and EARLE B. OTTLEY, EVADNEY PETERSEN, ROY A. ANDUZE, RANDAL N. JAMES, JOHN L. MADURO, FRANK PETERSEN, RUTH E. LABEET, PATRICK N. WILLIAMS, A. DAVID PURITZ, GENEVIEVE THURLAND, AUREO DIAZ, WARREN E. BROWN, RENHOLDT JACKSON, GERALD M. CHRISTIAN, CLARENCE A. HEYLIGER, MARIO N. DECHABERT, PERCIVAL H. REESE, VALDEMAR A. HILL, ALFREDO LIMA, CHARLES W. TURNBULL, HERMAN F. SMITH and JARVIS B. ABRAMSON, hereinafter referred to as the MORTAR AND PESTLE GROUP for brevity,

Defendants.

MEMORANDUM OPINION

Attorneys for the plaintiffs, Cox and Bornn, Esqs., of Charlotte Amalie, Virgin Islands.

Attorneys for the defendant, Henrita Todman, Shea and Gardner, Esqs. (Alfred L. Scanlan of counsel, admitted

Pro Hoc Vice) of Washington, D. C. and Antoinne L. Joseph, Esq. of Fredriksted, Virgin Islands.

Attorneys for the remaining defendants, John L. Maduro, Esq., James A. Bough, Esq., and Covington and Burling, Esqs. (David Isbell, Esq. of counsel, admitted Pro Hoc Vice) of Washington, D. C.

This is a civil action wherein the plaintiff brought an action against the defendant Todman, which action is substantially the same cause of action as that in the case of *Alexander* v. *Todman*, Civil No. 158—1963, and decided by this Court on July 17, 1964, and which the Court will incorporate by reference, and the remaining defendants, hereinafter called the Unity Party. In this opinion the Court will only deal with the second cause of action against the Unity Party. The second amended complaint in substance alleges that the Unity Party through a fraudulent, collusive and conspiratorial scheme took over the control of the Democratic Party of the Virgin Islands, and in its prayer for relief asks the Court to give back control of the Democratic Party of the Virgin Islands to the plaintiff.

The Democratic Party of the Virgin Islands, the plaintiff herein, has been a political organization in the Virgin Islands for over thirty years and has supported candidates in local elections for elective office. It has sponsored and has affiliated with it four political clubs: The St. John Democratic Club, The Democratic Club of St. Thomas, The Democratic Club of Christiansted and The Democratic Club of Fredriksted. Membership in the party is gained by becoming a member of one of these clubs. These clubs have sought and obtained members which

presently number 1300. In general elections held in the Virgin Islands, the plaintiff was supported by votes of its members as well as by votes of other electors who were not members of its clubs.

During the years of its existence the plaintiff has continually done the following things to form a strong political party: it has sponsored and supported candidates running for public office; it has financially assisted these candiates in running for public office; it has used the various news media to set forth the political philosophies of those candidates it supported for public office and the philosophy of the Democratic Party of the Virgin Islands; it has participated in the various conventions of the National Democratic Party in the United States by sending a National Committeeman and National Committeewoman as well as delegates to the National Conventions; it has made the name of the Democratic Party of the Virgin Islands known to all residents of the Virgin Islands as a political party which has no association with any other political party in the Virgin Islands; and it has become known to the people of the Virgin Islands that its candidates are running in opposition to candidates of other political parties in the Virgin Islands.

Since the year 1954 there has been organized an unincorporated political party in the Virgin Islands known as the Virgin Islands Unity Party and later known as the Virgin Islands Unity-Democratic Party, hereinafter called the Unity Party. This party has no affiliation with any national political party in the United States. The Unity Party has a similar type of organizational set up as that of the Democratic Party of the Virgin Islands and has a

membership approximating 1,000. It has become known as a separate political organization not affiliated or connected with any other political organization or party in the Virgin Islands. The political philosophy of the Unity Party differs widely from that of the Democratic Party so as to be irreconcilable. At the last general election the Unity Party won six of the eleven seats in the Virgin Islands Legislature. The remaining five seats were won by the Democrats.

The Unity Party through its officers, executive committee, and these working closely with them desired to obtain an affiliation with a national party in the continental United States. Thus, to achieve this end, the Unity Party through devious and slight of hand maneuvers planned to take over control of the Democratic Party.

A chronology of events may be most illuminating. On or about January 11, 1963, the Unity Party voted to change its name to the Virgin Islands Unity-Democratic Party. It also had the various clubs affiliated with it change their names accordingly. This was the first step in making the electorate believe that it was affiliated with the National Democratic Party in the United States. The second important stage of its scheme was in April, 1963. It caused a petition to be circulated among its members which was signed by 165 qualified voters, the vast majority of whom were Unity Party members. The obvious purpose of the petition was to register the Unity Party as the Democratic Party of the Virgin Islands. This petition was filed on May 1, 1963 pursuant to 18 Virgin Islands Code §301 (c). It is interesting to note at this

time that the Democratic Party had already filed its petition on April 19, 1963 and that petition had been accepted by the Supervisor of Elections. Members of the Unity Party who testified at the trial of this matter tried to explain why the second petition was filed. The reason they cited was their fear that the Democratic Party might withdraw from primaries pursuant to 18 Virgin Islands Code §301 (e). The Court finds no evidence to this effect or reason to suspect that this was the plan of the Democratic Party and as a matter of fact, there was testimony to the contrary. The Court further finds that the petition filed on May 1, 1963 was in reality a petition registering the Unity Party under the name of the Democratic Party of the Virgin Islands. The third major step of this scheme occurred on the evening of May 1, 1963. The Unity Party called a meeting of its membership. The purpose of this meeting was known only to the executive officers of the Unity Party. No notice of the purpose of the meeting was made known to the general membership. At this meeting the Unity Party voted itself out of existence. This dissolution is made known to the Court through the testimony of members of the Unity Party. They could produce no minutes of the meeting.

The Court would like to comment at this time that it feels even if the Unity Party was dissolved it was a breach of a fiduciary relationship between the officers of the party and its membership not to register the Unity Party with the Supervisor of Elections. To dissolve a party *after* it is precluded from registering itself, appeals to the Court as another of those "innocent" occurrences which add up to part of the conspiracy. The

next step in the conspiracy occurred between May 1, 1963 and May 15, 1963 when the Unity Party through its officers caused certain functions to be held on the Island of St. John and printed programs and tickets [Plaintiff's Exhibit Number 38] which stated that these functions were held by the St. John Democratic Club. This was all done without the permission of the St. John Democratic Club which was affiliated with the plaintiff. As a result of this, an injunction proceeding (Civil No. 131—1963) was held in this Court wherein the Court issued an injunction on May 29, 1963 against the officers and those cooperating with the Unity Party from using the name "St. John Democratic Club" or the use of the word "Democratic" in connection with any further activities.

The next step in the conspiracy was the filing by the Unity Party of the nomination of twenty-two candidates for the Territorial Committee of the Democratic Party of the Virgin Islands, which is the governing body of the party. The twenty-two candidates were Unity Party members. The primary elections were to be held on November 1, 1963. In campaigning for the primary election this of slate of twenty-two Unity Party candidates adopted the emblem of the Mortar and Pestle which had "formerly" been the emblem of the Unity Party for a long time. In the campaign, through speeches and newspaper articles, it referred to the Mortar and Pestle slate as being the Unity Party. Throughout the campaign for election as members of the Territorial Committee of the Democratic Party of the Virgin Islands, the candidates of the Unity Party (Mortar and Pestle) slate through the various news media made it clear that they held different principles

from the plaintiff and that they didn't consider themselves as part of the plaintiff. They also avowed that they would take over the control of the plaintiff if elected. It is inconceivable to the Court that if they were as righteous as they say they were, they could adhere to the philosophy of the plaintiff and yet espouse different principles.

The election for the Territorial Committee of the Democratic Party of the Virgin Islands was held on November 1, 1963. As a result of the election sixteen members of the Unity Party (Mortar and Pestle) slate were elected to the Territorial Committee and six members of the plaintiff were elected. All were certified by the Supervisor of Elections. But at the first meeting, the six members of the plaintiff refused to sit at the meeting. As a result thereof the six members of the Unity Party who were defeated in the primary election took their places with the remaining sixteen members of the Unity Party to comprise the Territorial Committee of the Democratic Party of the Virgin Islands which had been wrongfully certified by the Supervisor of Elections.

The twenty-two members who were nominated by the plaintiff to the Territorial Committee of the Democratic Party of the Virgin Islands then proceeded to hold meetings and at all times thereafter considered themselves as the governing body of the Democratic Party.

At no time was there communication between the plaintiff and the Unity Party. Neither group invited the other group to join and participate in the opposing group's activities. Each group at all times considered itself a separate and distinct entity.

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To further its scheme to take over the plaintiff party, the Unity Party through the wrongfully constituted Territorial Committee, drafted certain rules and procedures. Included in these rules was a provision which abolished all Democratic Clubs. Other rules were promulgated which stated that no group could form a club in the Democratic Party of the Virgin Islands, unless approved by the Territorial Committee. [Plaintiff's Exhibit Number 46, pg. 3.] This clever device would expel all members of the plaintiff from its clubs and would complete the takeover by the Unity Party of the plaintiff.

It is interesting to note that the Unity Party's official newspaper, *The Mortar and Pestle*, had a caption before the so-called dissolution of the party on May 1, 1963 which stated: "Published Weekly by The Virgin Islands Unity-Democratic Party". Since May 1, 1963 the name of the newspaper has not changed although the caption was changed to recite "Published Weekly by the Liberal Wing of The Democratic Party". [Plaintiff's Exhibits Numbers 29 and 30.] It is also interesting to note that the attacks in this newspaper upon the plaintiff and members of The Democratic Party have not subsided since the Unity Party has become "dissolved". *The Mortar and Pestle*, dated May 4, 1963, made the following comments on pages one and two:

Memorandum Opinion of District Court of the Virgin Islands—Civil No. 260—1963

"THE MORTAR PESTLE"

"Published by the Liberal Wing of
The Democratic Party of the Virgin Islands"

"There's Something in the Mortar Besides
the Pestle"

"Volume II Saturday, May 4, 1963 No. 1"

"POLITICAL PARTIES FILE NAMES
OPPOSITION CONCERNED OVER UNITY'S MOVE
THE END OF AN ERA"

"Old Guard Democrats in the Virgin Islands are facing the biggest battle of their political lives. The issue was joined on Wednesday, May 1st when over 100 electors, comprising the officers, members of the executive committee and the general membership of Unity-Democratic Party, from St. Croix and St. Thomas, filed a petition with the Supervisor of Elections requesting that the name 'The Democratic Party of the Virgin Islands' be recognized. Earlier, Old Guard Democrats had filed a petition requesting that the same name be recognized." (Omission)

"In a strategy meeting held during the week, Unity leaders decided that they would file the same name, but in the legal manner available to them under the law." (Omission)

"Thus the battle is now joined. The people of the Virgin Islands are about to witness for the first time a battle in which one faction will try to take over the leadership of a political party from an-

other faction using legal means. This happens all over the United States and it will happen in the Virgin Islands. It happened in Puerto Rico when forces led by Governor Munoz Marin and Mayoress Felissa Rincon staged a primary fight in which they toppled Mr. Benitez from the leadership of the Democratic Party in Puerto Rico."

"Of course, Old Guard Democrats are taking to the air every minute of the day trying to confuse the electorate, suggesting that the Unity 'failed to file' and that the Unity-Democratic Party is not recognized in the Virgin Islands. What they are not telling the people is that they are facing Unity leaders in a battle for the leadership of the Democratic Party in the Virgin Islands. Because they are confused and frightened they are trying to confuse the people and frighten them into panic. But our people will not panic."

"For years the people have been saying that Unity is the real Democratic Party of the Virgin Islands. The Old Guard leadership of the Democratic Party does not follow the principles of Franklin D. Roosevelt, Harry Truman and John F. Kennedy. They are more like rock-ribbed, conservative Republicans. They can't even speak for the people of the Virgin Islands, either here or in Washington, even though they say they have credentials in Washington. Because Democratic leaders in Washington are embarrassed by some of the attitudes and positions taken by the Old Guard

leadership on social and economic problems of the people of the Virgin Islands, they frequently turn to the Unity leadership for suggestions and advice when they sincerely want to take action for the progress of the people. So the thing to do is to depose the Old Guard slender leadership and give the Democratic Party in the Virgin Islands better leadership which will restore it in the image and philosophy of the liberal Democrats in America."

"Political tension here in the islands has heightened because the doors of all the political parties in the Virgin Islands are now opened to any elector. The party names which the Supervisor must now recognize under the law are: The Republican Party of the Virgin Islands; the Popular Vanguard, Inc.; The Virgin Islands Party; and the Democratic Party of the Virgin Islands. Around May 11th the Supervisor will announce these four names as the ones recognized. She will also call for electors and groups to file with her a slate of 22 candidates to comprise the territorial committee of each party. Naturally, Old Guard Democrats will file their slate of 22 names for election to the territorial committee. Unity leadership will also file a slate of 22 names."

"In order for Joe Alexander, Alex Moorhead, Ron De Lugo and the other Old Guard Democrats to be able to vote for their slate in the primary which take place on November 1st, they must enroll before September 20th as Democrats with the Board of Elections. Our side will also enroll

> as Democrats so that we can participate in the same primary and vote for our slate. Here is where the battle is. Electors will be able to vote for four in the district and twelve at large. The group which elects the majority on the territorial committee will naturally control the Party. After the territorial committee is organized it will elect a national democratic committeeman and a national democratic committeewoman. This is what has the Old Guard leadership scared, even though De Lugo boasts that he has credentials with the National Democratic Committee up until 1964."

Further damaging admissions that the Unity Party still remained in existence after May 1, 1963 is plaintiff's exhibit number 6. This exhibit consists of two checks drawn on the Chase Manhattan Bank by Warren E. Brown and Elmo D. Roebuck. The dates of the checks are October 2, 1963 and October 13, 1963. On the checks in handwriting are the words "Virgin Islands Unity Democratic". The ledger sheets from the Chase Manhattan Bank, plaintiff's exhibit number 5, shows checks drawn on the account of the Virgin Islands Unity Party from the date of "dissolution", May 1, 1963, until October 18, 1963. An additional fact is that the Unity Party kept its name listed in the local telephone directory and kept the phone operating until the fall of 1963.

The Court finds from all of the evidence that the Unity Party did not dissolve on May 1, 1963, but that it has just assumed the name of the Democratic Party of the Virgin Islands. The Court further finds that the philosophy and principles of the Unity Party is so irreconcilable

with that of the Democratic Party that it is inconceivable that those Unity Party members and officers could in good conscience in a matter of a few days embrace the principles and philosophy of the Democratic Party.

> "Examination may not be made into the hearts and minds of people to ascertain their thoughts and sympathies. Deceit often indicates that words do not truly disclose true thoughts and sentiments. But actions often belie words. In this case, it is more the actions of the respondents rather than their words which indicate their true policitical sympathies."[1]

All of the foregoing circumstances can lead to only one conclusion. That conclusion is the Unity Party through a fraudulent, collusive and conspiratorial scheme attempted and was successful in taking over the Democratic Party of the Virgin Islands.

The Court has done considerable research on the questions of law in this case and cannot find a single case in the United States that closely resembles the facts and law that is involved herein. The Court did, however, find five cases which were decided by the New York State Courts which are most interesting. These cases were decided pursuant to a New York Election Law and thus not controlling upon this Court, but the rationale of the cases are most impressive and persuasive.

In Re Mendelsohn, 197 Misc. 993, 99 New York Supp., 2d 438, was a suit brought under New York Election Law

1. *Werbel* v. *Gernstein,* 191 Misc. 275, 78 New York Supplement, 2d 440, 443.

to cancel the enrollment of a member of the Democratic Party on the ground that the member was not in sympathy with the principles of the Democratic Party. The Court, in this case, directed the respondent's enrollment to be cancelled. The respondent was an attorney who enrolled as a member of the Democratic Party in 1949. Prior to 1949, he had been enrolled as a member of the Liberal Party and was a candidate for Assembly in 1948 and 1946. In 1949 he had been a member of the Executive Committee of the Liberal Party. When he enrolled as a Democrat, he had not resigned from the Executive Committee of the Liberal Party. The Court found that the reason the respondent desired to join the Democratic Party was to obtain the Democratic nomination for the Assembly in his particular district. This was done to circumvent the Wilson-Pakula Law. The Court further found that the respondent tried to induce members of the Liberal Party to join the Democratic Party with him. The Court finally held from all of the evidence that the respondent was not in sympathy with the principles of the Democratic Party and stated: "To hold otherwise would be to ignore the realities and would be repugnant to common sense" [p. 445]. The Court in viewing the evidence stated on page 444: "One may not arrive at the conclusion that the respondent is not in sympathy with the principles of the Democratic Party merely because of these acts taken separately, but these acts must be considered in the light of what the respondent said and did at or about the time he enrolled as a Democrat in 1949." The Court went on further to state on page 445: "But where, as I think it has been conclusively shown

here, a man is not in reality in sympathy with the principles of a party, he is not entitled to enroll in order to further his ulterior motives."

The case of *Werbel* v. *Gernstein,* 191 Misc. 275, 78 New York Supp. 2d 440, is a case similar to *In Re Mendelsohn.* In that case, an action was brought to cancel the enrollment of certain members of the Democratic Party because they too were not in sympathy with the principles of the Democratic Party. The Court in that case discussed the Wilson-Pakula Law and stated that its purpose was to protect the integrity of political parties and to prevent the invasion into or the capture of control of political parties by persons not in sympathy with the principles of such parties. This case made some profound comments as to the political parties' philosophies and the need for having political parties in the United States. In this case members of the American Labor Party attempted to gain control of the Democratic Party by enrolling in the Democratic Party. The Court on page 443 stated: "The actions of the respondents considered alone may not have a sinister appearance but when considered with the actions of others, the enterprise in which all were engaged and the achievement sought leads to the inevitable conclusion that there existed a common plan and scheme by the members of the American Labor Party to capture and control the local 24th Assembly District Democratic Party organization." The Court held that certain enrollees in the Democratic Party were to have their memberships cancelled.

The third case, *Zuckerman* v. *Donahue,* 80 New York Supp. 2d 698, was also a case in which enrollment by

members in the American Labor Party was sought to be cancelled because they were not in sympathy with the principles of that party. The essence of the charge brought against them was that their enrollment and their subsequent political activities were part of a prearranged plan to seize control of the American Labor Party. The evidence from that case, although circumstantial, clearly indicated that most of the appellants attempted to seize control of the American Labor Party for ulterior motives. The great majority of the appellants were formerly Democrats who joined the American Labor Party in 1946 and 1947. Many of the appellants immediately became candidates for party positions. The Court held that not one of the many facts was controlling, but that the combination of all the factors involved showed that the appellants were unmistakably out of sympathy with the purposes of the party and that their enrollment in the party was prompted by ulterior motives. The Court again in this case cancelled the enrollment of many of the appellants.

Two additional cases which the Court shall only cite, but will not elaborate upon are *Ingersoll* v. *Heffernan* 188 Misc. 1047, 71 New York Supp. 2d 687, and *In Re Newburk*, 144 Misc. 765, 259 New York Supp. 434.

As previously stated these cases are only persuasive. They show, with the aid of a statute, that when there is an attempt through devious means to take over the machinery of a political party for ulterior motives, there is recourse in a court of law. In the case which is presently before the court, the plaintiffs have alleged and have proven fraud. This Court sitting, in essence, as a

Court of Equity must take all steps necessary to rectify any wrong which the defendants have committed through fraudulent means.

As was stated in the case *State Ex Rel. LaFollette* v. *Kohler*——Wisc.——228 NW 895, 69 ALR 348, 366: "If the election is void and the candidate has intruded into the office, it is clear that he had no right thereto, and a judgment of ouster excluding him from office and declaring it vacant is merely a summary and expeditious method of removing him therefrom. He does not by misconduct forfeit an office once lawfully acquired. He never secures title to it. It does not shorten his term, because he was never elected. It terminates the term of his intrusion into the office."

The Court holds a similar viewpoint as that expressed in the *Kohler* case [supra], that a person does not have title to an elected office, especially an office obtained through fraud, collusion, and conspiracy. This leads the Court to the ultimate conclusion that the sixteen members of the Unity Party (Mortar and Pestle) slate who were elected to the Territorial Committee shall be enjoined from acting or exercising any authority in the government of the Democratic Party of the Virgin Islands, the plaintiff herein. Further, the six persons elected to the Territorial Committee to fill the vacancy caused by the refusal of the six members of the plaintiff slate so elected and who refused to serve with the sixteen members of the Unity Party shall be similarly enjoined from acting or exercising any authority in the government of the plaintiff.

The officers, executive committee members and members of the Unity Party are further enjoined from representing

themselves to the public as members of the Territorial Committee of the Democratic Party of the Virgin Islands. Further, any actions taken by and any rules or procedures passed by the Territorial Committee of the Democratic Party of the Virgin Islands under the leadership of the Unity Party are declared null and void and not binding upon the Democratic Party of the Virgin Islands, the plaintiff herein.

The decision in *Alexander* v. *Todman,* Civil No. 158—1963, held that the Supervisor of Elections shall certify the Territorial Committee as nominated by the plaintiff herein as the only valid Territorial Committee of the Democratic Party of the Virgin Islands and this shall be the holding in this case.

Dated: July 17, 1964

/s/ Walter A. Gordon
Judge

Judgment of U. S. Court of Appeals, Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,000

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively, President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

vs.

HENRITA TODMAN, Supervisor of Elections,

Appellant.

(Civil No. 158—1963)

No. 15,001

JOSEPH ALEXANDER and DANIEL W. AMBROSE, respectively, President and Secretary of the Democratic Party of the Virgin Islands, acting on behalf of the Democratic Party of the Virgin Islands,

vs.

HENRITA TODMAN, Supervisor of Elections, and EARLE B. OTTLEY, *et al.*,

Appellants.

(Civil No. 260—1963)

APPEALS FROM THE DISTRICT COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. THOMAS AND ST. JOHN

Present: FORMAN, SMITH and FREEDMAN, *Circuit Judges.*

Judgment of U. S. Court of Appeals, Third Circuit

JUDGMENT

These causes came on to be heard on the records from the District Court of the Virgin Islands, Division of St. Thomas and St. John, and were argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the District Court of the Virgin Islands entered on July 20, 1964 in Civil No. 158 and in Civil No. 260 in favor of the appellees and denying the counterclaims of the appellants are reversed, and the orders and injunctions contained in the said judgments are vacated. The cases are remanded to the District Court with instructions to issue the injunctions requested by the appellants in their counterclaims and for any other action consistent with the opinion of this Court. Costs taxed in favor of appellants.

ATTEST:

IDA O. CRESKOFF,
Clerk.

October 21, 1964

Opinion of U. S. Court of Appeals, Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,000

JOSEPH ALEXANDER and DANIEL W. AMBROSE, Respectively President and Secretary of the Democratic Party of the Virgin Islands, Acting on Behalf of the Democratic Party of the Virgin Islands,

Appellees,

v.

HENRITA TODMAN, Supervisor of Elections,

Appellant.

No. 15,001

JOSEPH ALEXANDER and DANIEL W. AMBROSE, Respectively President and Secretary of the Democratic Party of the Virgin Islands, Acting on Behalf of the Democratic Party of the Virgin Islands, *et al.*,

Appellees,

v.

HENRITA TODMAN, Supervisor of Elections; and EARLE B. OTTLEY, *et al.*,

Appellants.

APPEALS FROM THE DISTRICT COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. THOMAS AND ST. JOHN

Argued October 12, 1964

Before FORMAN, SMITH and FREEDMAN, *Circuit Judges.*

Opinion of U. S. Court of Appeals, Third Circuit

OPINION OF THE COURT

(Filed October 21, 1964)

By FORMAN, *Circuit Judge.*

This is an appeal from two cases[1] consolidated for trial producing two judgments of the United States District Court for the Virgin Islands.

The judgment in Civil No. 158, among other things, ordered appellant Henrita Todman, Supervisor of Elections in the Virgin Islands, to certify a slate of candidates to the Democratic Party's governing body, the Territorial Committee, which slate had substantially been replaced in a primary contest by a competing group of alleged Democrats led by appellants, Ottley, *et al.* That judgment also declared as null and void a petition filed by parties associated with appellants, Ottley, *et al.*, registering the Democratic Party under the new Election Code. Appellant Todman was ordered to declare that petition a nullity and to remove it from her records.

In Civil No. 260, the court, among other things, enjoined appellants, Ottley, *et al.*, from acting as or representing themselves to be, members of the Territorial Committee of the Democratic Party of the Virgin Islands and from engaging in political activities as representatives of the Democratic Party. The judgment also declared null and void any actions taken, and rules or procedures passed, by the Territorial Committee of the Democratic Party of the Virgin Islands under the leadership of the appellants.

In both actions in the District Court the defendants, now appellants in this Court, counterclaimed, seeking

1. *Alexander* v. *Todman*, 231 F. Supp. 365 (D.V.I. 1964); *Alexander* v. *Todman*, 231 F. Supp. 368 (D.V.I. 1964).

injunctions directing the plaintiffs-appellees and their supporters, associates, and agents to refrain from holding themselves out as the lawful governing body of the Democratic Party of the Virgin Islands. Both counterclaims were dismissed by the District Court.

Briefly, this litigation, though notably voluminous, essentially records the following pertinent facts:

Party politics in the Virgin Islands has revolved around a two-party system, the two parties of power being the Democratic Party of the Virgin Islands, on behalf of which the plaintiffs-appellees appear, and the Virgin Islands Unity Party. The former, which has been in existence for thirty years, had an organizational connection with the National Democratic Party on the continental United States, while the latter, which had been formed in 1954, had no such connection with any other continental party. Membership in both parties was organized through the use of the political "club" system, the Virgin Islands for many years being without election code provisions governing party affiliation.

The Virgin Islands eleven-seat unicameral legislature was composed of six Unity Party Senators, four Democratic Party Senators and one Independent Senator (who has since become a Democrat), at the time the election code provisions were being considered. The present Election Code passed the above-constituted legislature by a strictly party vote of six to five on February 20, 1963, amendments passing on March 26, 1963.[2] The provision which has become of prime significance to this appeal, section 302, provides that any elector of the Virgin Islands, otherwise eligible, could become a member of the

2. 18 V.I. Code §§ 1-856 (1964).

party of his or her choice merely by subscribing to support the policies of that party.[3]

Section 301 of the new Election Code created alternate procedures by which a political party could file or petition for recognition under the new election law, on or before May 1, 1963. Under section 301(b)[4] the name of any political party organized and functioning in the general election of 1962 could be filed by petition signed by the president and secretary of that party. Section 301(c)[5] provided that the name of any political party could also be filed by submitting a petition to the Supervisor of Elections signed by 100 or more electors of the Virgin Islands.

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3. "§ 302. *Enrollment of party members, voting for members of first territorial committee*

"Each elector shall be eligible to enroll as a member of the recognized party of his or her choice, *by subscribing to support the policies of said party*. Upon enrollment each elector shall be entitled to vote for the members of the first territorial committee of such party, and to vote at any primary of such party or to be elected or serve as a party officer, or a member or officer of any party committee. The Supervisor of Elections shall prescribe the form for party enrollment of electors. Space shall be provided for the home address of the elector." (Emphasis supplied.) 18 V.I. Code § 302 (1964).

4. "§ 301. *Procedure for recognizing political parties*

* * *

"(b) The name of any political party presently organized in the Virgin Islands which in fact supported specific candidates at the General Election held in 1962 may be filed by a simple petition to be prescribed by the Supervisor of Elections signed by the President and Secretary of said party." 18 V.I. Code § 301(b) (1964).

5. "§ 301. *Procedure for recognizing political parties*

* * *

"(c) The name of a political party may also be filed by a simple petition to be prescribed by the Supervisor of Elections and signed by not less than 100 electors of the Virgin Islands." 18 V.I. Code § 301(c) (1964).

On April 19, 1963, pursuant to section 301(b) of the Election Code, the appellees filed a petition registering the Democratic Party of the Virgin Islands. On May 1, 1963, just prior to the deadline for filing political parties under the new code provisions, a group of 165 electors, most of whom were associated with the appellants and with former Unity Party activities, and most of whom were not enrolled Democrats at the time of the filing of their petition, also registered the Democratic Party of the Virgin Islands. Appellees, subsequent to May 1, 1963, therefore, demanded that Mrs. Todman hold a hearing under section 301(f)[6] of the Election Code, to determine which petition validly registered the Democratic Party, which request was rejected by her.

From May 1 to September 20, 1963, pursuant to section 302[7] and subsection (b)(3) of section 303[8] of the Election

6. "§ 301. *Procedure for recognizing political parties*

* * *

"(f) There shall be no similarity in the names of political parties which would tend to confuse or mislead the electors when voting in primaries or general elections. In cases where the same word or words, other than the words, 'Virgin Islands' appear in the petition filed for more than one political party, the Supervisor of Elections shall hold a hearing to determine which petition shall be accepted, giving due consideration to the hour each petition was filed, the number of electors signing each petition, and whether such party was officially in existence and participating in general elections in the Virgin Islands prior to the effective date of this chapter. The Supervisor of Elections shall, following such hearing, make a public announcement of his decision. . . ." 18 V.I. Code § 301(f) (1964).

7. See note 3 *supra*.

8. "§ 303. *Territorial committees; electing members of first territorial committees*

"(a) There shall be a territorial committee for each party in the territory, which shall be composed of twenty-two members as follows: four members from the district of Saint

Thomas, four members from the district of Saint Croix, two members from the district of Saint John, and twelve members at large. Vacancies shall be filled according to party rules.

"(b) The members of the first territorial committee shall be elected in accordance with the following procedure:

"(1) The Supervisor of Elections shall announce that nominations for membership on the first territorial committee of each recognized political party may be filed in his office by electors who qualify according to residence and who shall subscribe to support the policies of the party of his or her choice. This announcement shall be made at the same time that the names of the recognized political parties are published in the local newspapers.

"(2) Nominations shall be filed on a simple form prescribed by the Supervisor of Elections not later than ten days after the first date of the publication. Said form shall provide for the nomination of candidates of a full slate of twenty-two members for the first territorial committee as a unit under a single symbol designated by said slate of candidates.

"(3) At any time up to September 20, 1963, any elector may enroll as a member of the party of his or her choice by appearing before a member of the board or the clerk and state in writing, over his signature, the political party in which he desires to enroll and that he subscribes to the policies of said party, and the board member or clerk shall cause the enrollment of the elector's political designation to be made in the general and district registers, in accordance with the procedure set forth in subsection 108(a) of this title.

"(4) On November 1, 1963, the polls in the Virgin Islands shall be open from 8 o'clock a.m. to 6 o'clock p.m. to allow each elector to vote for the members of the first territorial committee of said party.

"(5) Each elector shall be entitled to vote for the twelve members at large and the four members for the district in which he or she is registered to vote.

"(c) The ballot for the election of the members of the first territorial committee of each recognized political party shall provide for voting by a symbol for a full slate of candidates, provided for in subsection (b)(2) of this section, as a unit. Such ballot shall, however, also permit the electors to vote for

Code, over 10,000 voters enrolled in the Democratic Party. As the Unity Party did not register itself, there was no opportunity for the electorate to enroll in that party. Furthermore, former Unity leaders enrolled, and encouraged their followers to enroll, in the Democratic Party. At the same time, the then constituted Democratic organization was also encouraging enrollment.

Furthermore, subsequent to May 1, 1963, two separate slates of nominees for the Territorial Committee of the Democratic Party of the Virgin Islands were entered pursuant to the procedures authorized by section 303 of the Election Code. One of these slates, represented by appellees, comprised primarily of people who had been active in the Democratic clubs of the Islands, adopted the Donkey as its symbol. The second slate of candidates, represented by appellants, some of whom had been officers and active members of the Unity Party, adopted the symbol of their alleged dissolved or abandoned Unity Party, the Mortar and Pestle.

On November 1, 1963, the primary election was held and the Mortar and Pestle group won sixteen of the twenty-two seats on the Democratic Party's Territorial Committee. The Supervisor of Elections certified the twenty-two winners, although the six Donkey Democrats refused to sit as part of the newly formed Territorial Committee.

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candidates on two or more slates, or to insert names of candidates.

"(d) The members of the first territorial committee shall serve until the party primaries in 1966 as provided in this title. In 1966 and thereafter the members of the territorial committee shall be elected at the primary election and shall serve for two years." 18 V.I. Code § 303 (1964).

The following legal moves have arisen from the above-stated abbreviated background of this litigation:

Subsequent to the above-mentioned refusal by Mrs. Todman to hold a hearing relative to the filing of the two petitions which were accepted by her as registering the same political party, the plaintiffs-appellees, on June 12, 1963, appealed under section 301(f)[9] of the Election Code (Civil No. 158), asking that the second petition registering the Virgin Islands Democratic Party be declared null and void. Mrs. Todman moved to dismiss the complaint, which motion was denied on October 31, 1963.[10] However, on September 3, 1963, a second law suit had been filed by the plaintiffs (Civil No. 260). This time the plaintiffs applied to the District Court to preliminarily enjoin the holding of the November 1, 1963 primary election. On October 31, 1963, the District Court also denied this application. However, this second law suit was consolidated for trial with the initial one brought against Mrs. Todman, and on July 20, 1964, Judge Gordon granted plaintiffs the relief for which they asked, as noted at the outset of this opinion. Motions addressed to the District Court to stay the judgment and suspend the injunction in the consoli-

9. "§ 301. *Procedure for recognizing political parties*

* * *

"(f) . . . Any association, club, group, organization, or instrumentality whose petition is not accepted by the Supervisor of Elections may file an appeal with the District Court not later than seven days after the announcement of such decision for review of the same. Upon such appeal, the District Court may affirm, modify or reverse the decision of the Supervisor of Elections and may declare which of the original petitions filed is to be accepted." 18 V.I. Code § 301(f) (1964).

10. No findings of fact or conclusions of law were filed by the District Court.

dated cases were denied on July 27, 1964. The present appeal was taken and the motion to stay the judgments and injunctions was renewed before this Court and granted on August 5, 1964, pending an accelerated appeal.

The injunctive relief sought by the plaintiffs-appellees rests on their claim that former Unity Party partisans conspired to perpetrate a scheme of fraudulent enrollment in the Democratic Party for the sole purpose of taking over that Party. The plaintiffs sought to marshal an extensive series of facts relating to the activities of the Unity Party which, they contend, demonstrates the conspiracy and fraud.[11]

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11. The trial court found, among other things, that the following facts and developments evidenced defendants' conspiracy and fraud in Civil No. 260:

1. The political philosophy of the Unity Party differed widely from that of the Democratic Party so as to be irreconcilable.

2. The Unity Party desired to obtain an affiliation with a national party in the continental United States.

3. On January 11, 1963, the Unity Party voted to change its name to the Virgin Islands Unity-Democratic Party. Its various affiliated clubs also changed their names accordingly.

4. Unity Party leaders, on May 1, 1963, filed a petition under section 301(c) of the Election Code for the obvious purpose of registering the Unity Party as the Democratic Party.

5. On the evening of May 1, 1963, a meeting of the Unity Party was called, which purpose was known only to the executive officers of that Party. At this meeting the Unity Party supposedly voted itself out of existence.

6. The Unity Party filed in nomination twenty-two candidates for membership on the Territorial Committee of the Democratic Party.

7. During the primary campaign the leaders of the Unity Party constantly enunciated the differences which set them apart from the Democratic Party.

8. After the primary election produced a victory for the Unity slate, each group, both plaintiffs and defendants, at all times considered itself a separate and distinct entity.

Though the defendants-appellants disclaim the charge of conspiracy and fraud, their major defenses are jurisdictional in nature. It is initially argued that the courts are merely faced with a question of who rightfully controls the Democratic Party machinery, a question political in nature and, therefore, not a case or controversy calling for application of the judicial power. Secondly, the defendants contend that the Election Code, itself, provides the exclusive test for enrollment in a party, and for candidates seeking to run in a primary election. As the statute provides the exclusive test, the courts lack jurisdiction to superimpose conditions for party membership beyond those prescribed by the Election Code, say the defendants.

As the interrelationship of both the appellants' and the appellees' arguments emerges, two issues, revolving around section 302 of the Virgin Islands Election Code appear for our determination: (1) Whether the application of section 302 raises a substantial problem of statutory construction within the judicial competence deserving of interpretation and resolution, and (2) Whether the provisions of section 302 have been abused by the alleged conspiratorial aims of the appellants herein? To these issues we now turn.

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9. The leaders of the Unity Party, through their control over the Territorial Committee, abolished all clubs, resulting in the complete takeover by the Unity Party of the Democratic Party.

10. The Unity Party's official organ, *The Mortar and Pestle*, has constantly emphasized the differences in policy between plaintiffs and defendants.

11. Events demonstrate that the Unity Party has remained in existence after its supposed dissolution on the evening of May 1, 1963. Its checking account continues to be kept in the name of the "Virgin Islands Unity Party," and the Unity Party has also remained listed in the local telephone directory.

Opinion of U. S. Court of Appeals, Third Circuit

—1—

Appellants' contention that the courts must relinquish jurisdiction in a case where there is a question of bona fide party enrollment rests both on the alleged political nature of the question and the argued non-reviewability of the statutory test of bona fides under section 302 of the Election Code. That position, when analyzed, reveals a three-pronged assault on the actions of the District Court in taking jurisdiction.

Initially, appellants are concerned that the District Court assumed jurisdiction of an issue which the Virgin Islands legislature assertedly has settled by the enactment of the new Election Code in February of 1963. Reference is made to the standards determinative of political questions as outlined by Justice Brennan in *Baker* v. *Carr*.[12] Appellants refer to the first paragraph of the following relevant excerpts from the opinion:

> "* * * Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; * * * or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
>
> "Unless one of these formulations is inextricable from the case at bar, there should be no dismissal

12. 369 U. S. 186 (1962).

> for non-justiciability on the ground of a political question's presence. The doctrine of which we treat is one of 'political questions,' not one of 'political cases.' * * *" [13]

Contrary to the conclusion drawn by the appellants, we find in Justice Brennan's standards a determination that, for the most part, the political questions remaining in which a court must relinquish jurisdiction, relate to the separation of powers between coordinate branches of government. The aim is to keep the judiciary in equilibrium relative to other branches of government. Prevention of unnecessary conflict between the judiciary and the legislative and executive branches is the goal. No such problem presents itself here.

This court is clearly faced with, in Justice Brennan's words, a "political case." Appellants' contention that the present controversy represents only the "political question" of which political faction constitutes the elected leadership of the Democratic Party of the Virgin Islands is not tenable. Issues revolving around allegations of conspiracy and fraud are to be adjudicated within the context of this "political case."

Secondly, appellants have contended that the courts have no jurisdiction over the application of section 302 of the Virgin Islands Election Code, on the ground that the sincerity of the pledge of appellants' party affiliation expressed pursuant to section 302 is non-reviewable. The courts are, they submit, therefore jurisdictionally barred

13. *Baker* v. *Carr*, *supra* note 12, at 217.

from going behind the statutory requirement to pass judgment on the sincerity of the appellants' beliefs.[14]

Jones v. *McCollister*,[15] a key case relied upon by the appellants, is in no way dispositive here. Appellants properly indicate that in *McCollister*, the California Con-

14. Section 108(b) of the Election Code, a provision for challenge of party enrollment, discussed in the text accompanying note 22 *infra*, does not become effective until after the general election in 1964. Without taking a position as to our power to review a section 108(b) finding of bona fide party enrollment, suffice it to say that in our present context section 108(b) provides no basis for an argument that a statute presents the exclusive procedure by which the question of party affiliation is to be resolved. Section 108(b) reads as follows:

> "§ 108. *Change of enrollment of political party; cancellation of party enrollment*
>
> * * *
>
> "(b) At any time not later than the twentieth day preceding any primary, any qualified elector of the legislative district, including any watcher, may petition the board to cancel the party enrollment of any registered elector of such district who has previously enrolled as a member of a party for the purpose of voting at primary elections, setting forth under oath, that he has probable cause to believe that such elector is no longer a member of the party with which he has been enrolled, and also setting forth that due notice of the time and place when said petition would be presented had been given to the person so registered, at least 48 hours prior to presentation of the same, by delivering a copy of the petition to him personally or by leaving it with an adult member of the family with which he resides. If, at the hearing of any such petition, the elector against whom the petition is filed appears and certifies in writing that he subscribes to the policies of the party with which he is enrolled at the time of said hearing, the petition shall be refused, otherwise the party enrollment of such elector shall forthwith be cancelled. This subdivision shall become effective after the general election in 1964." 18 V.I. Code § 108(b) (1964).

15. 159 Cal. App. 2d 708, 324 P. 2d 639 (1958). In this case, plaintiff sought to enjoin an adversary's political advertising, on the ground that the advertisements contained no reference to party affiliation. It was therefore contended that a defrauding of the public was in progress.

stitution explicitly vested in the legislature the right to determine the tests and conditions upon which electors, political parties, or organizations of electors may participate in California state elections. However, the point of contention in *McCollister* was in no way covered by any legislative pronouncement. Absent such, it was held that the court had no jurisdiction to create it, and the activity complained of was, therefore, determined to be presumably valid. In the instant case, there is legislation present, section 302 of the Election Code. The question then becomes whether the Court may take jurisdiction to interpret that statutory provision. On this issue, appellants' documentation sheds little light.

Section 302 of the Election Code merely directs the prospective enrollee to subscribe to the policies of the party in which the enrollment is sought. Section 303(b)(3) prescribes the mechanics of enrollment, and in this case, pursuant to that section, prospective enrollees signed a simple statement of agreement with party policies.[16] Ap-

16. A sample of the form used is as follows:

"PETITION FOR ENROLLMENT AS A MEMBER OF RECOGNIZED POLITICAL PARTY

"I, ..., a qualified elector of the Virgin Islands, residing at ..... in the legislative district of ST. CROIX, hereby subscribe to support the policies of

.....

Name of Party

and hereby petition to be enrolled as a member of the said party in accordance with the provisions of Section 302 of Title 18 of the Virgin Islands Code.

Dated: .....

.....

Signature of Elector

Filed: .....

.....

Clerk"

pellants contend, in effect, that the mere subscription raises a conclusive presumption of agreement with party policies.

On the face of the statute, appellants' position appears to be supportable. Section 302 reads, in part:

> "Each elector shall be eligible to enroll as a member of the recognized party of his or her choice, by subscribing to support the policies of said party."

The statute does not require a detailed demonstration of a present intention to support the policies of the party in which enrollment is sought. A mere pledge of support is sufficient. However, as we view this provision, it is inconceivable that a legislature would pass a provision which could leave unquestioned the bona fides of the subscription. The resultant opportunity for effective encroachment on a party's integrity would be ever present. Thus, in construing section 302, we hold that a court may, at least where no effective administrative procedure exists for challenge, judge the bona fides of an enrollee's statutory pledge of present intention to support the policies of the party in which he has enrolled.

Finally, an oblique challenge is made to a court's ability to construe a statutory provision such as is in existence here. Raising the aura of a political question, appellants make the following reference to the aforementioned case of *Baker* v. *Carr*:[17]

> "* * * Prominent on the surface of any case held to involve a political question is found * * * a lack of judicially discoverable and manageable standards for resolving it: * * *"

17. *Supra* note 12, at 217.

Though at times it may be difficult to define standards of political party policies,[18] "political cases" in which standards assertedly exist are emenable to judicial determination. Though the parties to this litigation apparently agree that some policy standards exist, the parties are in disagreement as to what these policies of the Democratic Party of the Virgin Islands are. This conflict serves as a basis upon which this Court may reach the question of which policies, if any, have been proved, and to what extent the behavior of the defendants-appellants comports thereto. Section 302 of the Virgin Islands Election Code, is, therefore, within the judicial competence to construe.

Having considered the above arguments raised by the appellants, we conclude that jurisdiction may be assumed over the problem at hand.

—II—

As will be discussed below an essential qualification of both the signatory of a nominating petition of a candidate for membership on the Territorial Committee, and of the nominee, himself, is that each must be an enrolled member of the party in which the nominee is a candidate.[19]

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18. See note 32 *infra*, and accompanying text.

19. Under section 344 it is provided, among other things:

"§ 344. *Nomination petitions*

"(a) . . . In no event shall any person's name be printed upon the official ballots of any party for the office of member of committee or other party officer, unless he is a duly registered and enrolled member of such party.

"(b) . . . [T]he nomination of candidates for public office, or for election as members of committees and other party offices shall be made by separate nomination petitions in their behalf. . . . signed by duly registered and enrolled members of such party who are qualified electors of the territory, or the legislative district, as the case may be, within which the nomination is to be held. . . ." 18 V.I. Code § 344(a)(b) (1964).

See also 18 V.I. Code § 345(b)(1) and § 348(b) (1964).

The fundamental charge in these suits calls into question the standing of the twenty-two defendants-appellants as valid members of the Territorial Committee of the Democratic Party by virtue of the election of November 1, 1963. The reason for the attack upon their party allegiance is that the statement of enrollment of each contained a false pledge of adherence to the policies of the Democratic Party. Furthermore, it is asserted that the electors who signed their nomination petitions likewise were not members of the Democratic Party by reason of similar defective certificates of enrollment.

The appellants further contend that the District Court erred in entertaining these suits because, prior to their institution, the appellees had failed to procure a resolution of the question by exhausting the administrative remedies afforded under sections 629 and 412 of the Election Code. Although the District Court did not express itself on the issue of exhaustion of statutory remedies, it was raised by both the defendant-appellant, Mrs. Todman, in her answer to the second amended complaint in Civil No. 260 and, simularly, by the other defendants in their answer to Civil No. 158.

Section 629 of the Election Code[20] provides a proce-

20. "§ 629. *Recounts; procedure; new election; appeal*

"(a) A petition for a recount may be filed by any candidate in a primary election who believes that there has been fraud or error committed in the canvassing or return of the votes cast at such primary or election The petition shall be filed with the board of elections of the legislative district in which the recount is requested. Such petition shall contain a statement . . . that the petitioner has reason to believe and does believe that the records or copies of records made by the election officers at one or more polling places in such district are erroneous, . . . or that votes were cast by persons not entitled to vote therein, . . . The petition may not be filed later than seven days after the primary or election at which the votes were cast." 18 V.I. Code § 629(a) (1964).

dure for a recount both based on erroneous records made by election officers and on the ground that votes were cast by persons not entitled to vote. This section is directed to action which may be taken after a primary or election to test the validity of the votes cast or the records made by the election officers. Appellees could not be deprived of the right to a judicial adjudication of their pre-primary charges by a requirement that they must await the outcome of the primary and then resort only to the section 629 statutory proceeding before the institution of their suits. We cannot agree with appellants' contention in this respect.

Section 412[21] provides that the District Court may be

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21. The pertinent part is:

"§ 412. *Objections to nomination petitions and papers*

"All nomination petitions and nomination papers received and filed under this chapter, and accepted after the examination required by section 411 of this title, shall be deemed to be valid, unless within five days after the last day for filing such nomination petition or papers, a petition is presented to the district court, specifically setting forth the objections thereto, and praying that such petition or paper be set aside. . . ." 18 V.I. Code § 412 (1964).

The preceding section 411(a) reads:

"Examination of nomination petitions, papers, and certificates; notice of defects

"(a) The Supervisor of Elections or his deputy shall forthwith examine the nomination petitions, nomination papers or nomination certificates filed with him under this chapter and shall permit them to be examined by any interested citizen. If the identity of any signer is unknown to him or if the identity or capacity of any signer seems doubtful or is challenged by any citizen, the Supervisor of Elections or his deputy within three days after the close of the nomination period shall hold a public hearing in the legislative district in which the signer in question purports to reside, to which hearing such signer and any material witnesses may be summoned. The Supervisor of Elections or his deputy shall determine the signer's identity and capacity and ascertain that the candidates have been validly nominated." 18 V.I. Code § 411(a) (1964).

called upon to set aside nomination petitions received and filed by the Supervisor of Elections after the examination required by section 411. The defendant-appellants' contention that plaintiffs did not, but must, exhaust this statutory remedy fails for two separate and distinct reasons.

We find that a reading sections 108(b)[22] and 411-12 in pari materia reveals the inapplicability of the section 411 procedure under the facts of this case. The dispute falling without section 411, a resort to section 412 judicial review would be improper.

Though section 411 permits inquiry, on many grounds, into the capacity of a signatory to a nomination petition to so act, bad faith enrollment in a political party in violation of section 302 cannot serve as a ground for that challenge in this case. The procedure for the cancellation of a party enrollment on grounds of bad faith is governed by section 108(b), not effective until after the 1964 general election. Though we have indicated in this case that a court challenge is proper, the intent of the legislature apparently was to forsake an administrative challenge to the bona fides of enrollment until after the termination of the period of transition from the political club system to the new Election Code provisions. That being the case, it would be incongruous, indeed, to determine administratively that a bad faith enrollment could eliminate a signatory to a nominating petition, and thus invalidate that petition, yet, absent section 108(b), there could be no administrative challenge to that person's bona fide enrollment for purposes of cancellation of such. At least to this extent, section 411's statutory remedy does not bar this suit. Section 412, therefore, need not be exhausted, under our facts, prior to our taking jurisdiction.

22. See note 14 *supra*.

Furthermore as to section 412, since the inquiry prescribed by this section is directed to be made in the District Court, the very tribunal before which the issues raised by these suits have been tried and adjudicated, to remand them for statutory resolution at this point would indeed be a useless excursion.

Under these circumstances, neither section 629 nor section 412, nor indeed section 411, furnished statutory remedies which required exhaustion by the appellees before they commenced these suits.

—III—

Plaintiffs' allegations of conspiracy and fraud come down to a claim that former Unity Party adherents as a group unfaithfully certified their allegiance to the Democratic Party under section 302 of the Election Code and so manipulated their affairs that the Unity Party in fact succeeded in gaining control of the Democratic Party in an illegal manner. The abuse of section 302 being apparent, argued the plaintiffs, those individuals aligned with the Unity Party, *i.e.*, those twenty-two candidates for the Territorial Committee of the Democratic Party on the Mortar and Pestle slate, clearly were not enrolled in the Democratic Party, for section 302's requirement of subscription to the policies of the party in which the enrollment is sought, was violated. It follows therefrom that the Supervisor of Elections improperly allowed that slate to run in the Party primary and improperly certified its sixteen victorious candidates to the Territorial Committee. Furthermore, the only slate to be recognized is that of the Donkey Democrats. Acceptance of the plaintiffs' position, as reflected in the action of the District Court, results in both

the abnegation of all the acts of the Territorial Committee of the Party while under the control of the Mortar and Pestle people and in the permanent injunction of this group of defendants from participation in Democratic Party activities.[23]

Reference to the background of the passage of legislation creating new mechanisms both for party enrollment and for the nomination of party candidates is of importance to the resolution of the substantive issue of conspiracy and fraud raised by defendants-appellants. Though we are particularly avoiding an entangling discussion as to the barriers, or lack of barriers, to club membership which formerly characterized party politics in the Virgin Islands, it is evident that the political club system as it had existed in many states and in the Virgin Islands fostered a popular aloofness from internal political party activities.[24] Within such a political framework one of the essential political party democratizing factors is lost; pop-

23. Although the gravamen of plaintiffs-appellees' action was fraudulent enrollment in the Democratic Party, much emphasis is unnecessarily placed on Mrs. Todman's refusal to hold a hearing under section 301(f) of the Election Code, which resulted in the Mortar and Pestle's petition of May 1, 1963 registering the Democratic party not being reviewed. Plaintiffs alleged that such a hearing must be held unless this Court accepts the District Court's finding of illegal acts making unnecessary a resort to a section 301(f) proceeding.

It is clear, however, that the first petition registering the Democratic Party, that of the Donkey Democrats, was accepted. Plaintiffs can only argue for a section 301(f) hearing if they have been damaged in some way. No such damage appears. Plaintiffs-appellees' contention is, therefore, of no merit.

24. Though the combined membership of the political clubs of both the Unity and Democratic parties was 2300, the advent of the New Election Code procedures brought over 10,000 enrollees into the Democratic Party.

ular nominations of party candidates is denied. As pointed out by V. O. Key, a leading professor of politics:

> "The cliques of people who made up party organizations from time to time gain almost unlimited power in some states and cities. Such closely held power ran counter to the notions of popular democracy, and legislators set about to remedy the matter by bringing the party organization under popular control. By adoption of the direct primary, the organization was stripped of its most important function, that of nomination. The party organization itself, consisting largely of self-appointed individuals, was made in varying ways popularly elective, on the supposition that this mode of choice would make the organization responsive to the rank and file."[25]

The changes in Virgin Island practices wrought by passage of the new Election Code in February of 1963 emphasize the popular election of party leadership, rather than the popular nomination of party candidates. The nomination of party candidates is reposed in the hands of that popularly elected party leadership.

The Virgin Islands Election Code is not dissimilar from some of our existing state election codes. Much of it has been fashioned after Pennsylvania law and, as both parties to this suit point out, Senior Judge Maris of this Circuit and the Equity Publishing Company had been instrumental in the preparation of the draft of the new Election Code, much of which was accepted intact. The

25. Key, Political Parties, and Pressure Groups 379 (4th ed. 1958).

legislature's desire to incorporate into the Election Code the recognized "present intention" test of a party allegiance, rather than the recommended "past affiliation" test, parallels the approach of many legislatures. And it is the alleged abuse of section 302's pledge of a "present intention" to support the policies of the political party in which membership is sought that is the measure by which the basic allegations of conspiracy and fraud must be judged.

As indicated above, plaintiffs attack, as fraudulent, defendants-appellants' section 302 subscription of support for the policies of the Democratic Party of the Virgin Islands. It is claimed that the Party's integrity as a political entity has been undermined by defendants' conspiratorial acts. To be sure, the argument can not successfully be made that an election code providing for popular participation in certain fundamental political activities should open a party to bad faith incursions, the end being either the nomination of a weak candidate or the ultimate takeover of a party by a group with interests antithetical to that political institution. In the Virgin Islands, section 302 of the Election Code provides the basis for a check on such bad faith incursions.

A pledge of "present intention" to support a party's policies under section 302 of the Election Code cannot be used, however, to insulate a political party from good faith popular participation by those who have previously not been associated with a party's internal political activities through membership in a party's political clubs. A party may not take, particularly during a transition period from a system of internal government such as a club system to one of popular participation in certain

party activities, an unrealistic position as to the extent to which disagreement in certain areas between a prospective party enrollee and the party, itself, results in the failure of the applicant to meet the test of a bona fide pledge of a present intention to support the party's policies.

Practically speaking, in the United States and its territories, "patterns of political faith consist in part simply of the absence of groups irreconcilably attached to divisive or parochial beliefs that in other ountries provide bases for multi-party systems."[26] We must not overlook the popular consensus on fundamentals that has existed and has fostered a two-party system such as has been in existence in the Virgin Islands. "At times, it can be said, with a color of truth, that we are all liberals; at another time, it may be equally true that we are all conservatives."[27] Therefore, Professor E. E. Robinson's characterization of the intellectual nature of a political party within the context of the two-party system has a relevance not to be underestimated:

> ". . . It is not concerned with matters of fact, or doctrine, or even principle, except as they bear upon the great cause for existence: success at the polls. Such organizations not only contain men of divergent views; they must also appeal to voters of differing opinions, prejudices and loyalties. It is folly to talk of finding an actual basis [for political parties] in any set of principles relating to public welfare."[28]

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26. *Id.* at 230.
27. *Id.* at 231.
28. Robinson, "The Place of Party in the Political History of the United States," Annual Reports of the American Historical Association for the Years 1927 and 1928, p. 202 (1929) cited in Key, *supra* note 24, at 232.

Thus, Professor Key concludes that affiliation with a party is usually a matter of great informality, with a party member hewing to its principles only "as he interprets them."[29] It is in light of such existing political realities that the bona fides of a person's section 302 pledge must be judged.

Moving specifically to the question in issue, whether the defendants-appellants fraudulently passed themselves off as Democrats in a conspiracy to gain control of the Democratic Party of the Virgin Islands, a preliminary word must be said concerning the binding nature upon us of the District Court's findings of fact. The District Court found a number of evidentiary and mediate facts from which it found the ultimate fact that the defendants had conspired to fraudulently participate in, and gain control of, Democratic Party functionings.[30] The evidentiary facts in the record are not in dispute. The District Court's finding as to these may not be reviewed on appeal. However, the inferences drawn therefrom, the mediate facts reached, and finally the conclusion, the ultimate fact drawn from a series of evidentiary and mediate facts, are reviewable[31] and now become subject to our scrutiny.

Plaintiffs-appellees have relied on contended differences between the policies of the Democratic Party of the Virgin Islands and those views for which defendants-appellants stand, to demonstrate that the section 302 pledge of present intention to support the policies of the Demo-

29. Key, *supra* note 24, at 233.

30. For the pertinent findings of fact see note 11 *supra*.

31. See *Sears, Roebuck and Co.* v. *Johnson*, 219 F. 2d 590, 591 (3 Cir. 1955); *Automotive Devices Co.* v. *Automotive Devices Co. of Pa.*, 292 F. 2d 663, 664 (3 Cir. 1961); *Surgical Supply Service, Inc.* v. *Adler*, 321 F. 2d 536, 539 (3 Cir. 1963).

cratic Party had been made in bad faith. Although vigorously advocating this position, appellees can point to no document, such as a statement of Party principles, either in the record or otherwise, which would elucidate those principles. Appellees also have failed to introduce specific evidence of the basis of defendants' disagreement with Democratic Party policies, although general evidence relative to former opposition to the Party, itself, by these defendants, was admitted. Needless to say, this factor alone is not dispositive of the issue of a bona fide pledge of a "present intention" to support that Party's policies.

As admitted by the appellees at the oral argument herein, the only evidence in the record supporting a finding of the Democratic Party's policies, and defendants-appellants' disagreement with those policies, is testimony by one Stefanos O'Reilly, formerly the President of the Fredriksted Democratic Club in the Virgin Islands.[32] Mr.

32. Mr. O'Reilly's testimony concerning the policies of the Democratic Party was as follows:

> ". . . we believe and have practiced the philosophy that the policies of the Democratic Party start with its membership and works its way up to the top. We believe in the full participation of our members in the formulation of policies, and unlike the Unity Party their policies are formulated at the top. We believe in the honest disagreement between our members. The Unity Party believes there should be no disagreement—that the majority leaders rule. We believe in honesty and integrity of our members, our candidates for the Legislature and our employees working for the government. We believe in sound fiscal responsibility. We believe that the taxpayers are entitled to one hundred percent of their tax dollars and that they should get the maximum from their taxes, and unlike the other side, they do not believe in this philosophy. This has been evidenced just one year ago in the Legislature where they have spent more money than they have earned and it was required for them to increase taxes in order for them to meet these deficiencies. We believe that if it ever became necessary—if

O'Reilly's statement of party principles is one to which almost anyone in the Virgin Islands could subscribe. The alleged differences between the Democratic Party's policies and those of the twenty-two defendants-appellants, as outlined by Mr. O'Reilly, falls far short of a demonstration of an antagonism based on intellectual differences between opposing groups. We hold that plaintiffs-appellees have fallen far short of sustaining the burden of proof necessary to show a policy antagonism between the Democratic Party and the defendants-appellants which would justify our concluding that a bad faith enrollment, an abuse of section 302 of the Virgin Islands Election Code, has taken place.[33]

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the leadership of my party believes—that we should dissolve our organization, we believe we owe a responsibility to our membership to inform them and have them participate in making a statement by issuing a convention call where they can make that decision. The Unity Party has not done that. We believe in more than one party form of government. As I said in one of my television speeches, we are all aware of the dangers of a one party form of government. We have seen it in Russia, we have seen it in Cuba, we have seen it in China. And we here in the Virgin Islands don't have to guess what these dangers are. We can see them. We don't want them to happen here in the Virgin Islands. The actions of the Unity Party over the past year, as you know,—the Democratic Party of the Virgin Islands for the past ten years has been the only effective opposition to this group and the efforts in taking over the Democratic Party was designed as an opposition and introduced into this island for one party form of government, which we all know are very dangerous. We could not stand for that. I can enumerate other differences but I think these are the basic features which make us different." Transcript of Trial, pp. 305-07.

33. Plaintiffs-appellees have relied on a group of New York cases to persuade us of the fraud of this case. *Zuckman* v. *Donahue*, 274 App. Div. 216, 80 N. Y. S. 2d 698 (3d Dept. 1948), *aff'd without opinion*, 298 N. Y. 627, 81 N.E. 2d 371 (1948) is representative of the New York approach as advanced by the plaintiffs-appellees. This

Standing alone this would be dispositive of the issue. And when considered along with the fact that this case arises in a year of transition from the club system of party membership to the above-described system brought about by the new Election Code provisions, only a clear showing that a challenged enrollee holds basic views adverse to the policies of the party in which enrollment is sought will sustain the finding of a section 302 violation. The failure to make such a showing supports our determination that the section 302 pledge was not abused.

Offered along with the charge of fraud in the use of section 302, was the plaintiffs' contention that defendants' actions, including their subscription to the section 302 pledge of "present intention" to support said party policies, were part of a conspiracy to assume control over the

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case, as well as other New York cases relied upon by plaintiffs-appellees, involved conflict between the New York Democratic Party and the American Labor Party in New York. Both parties were in existence as viable and distinct entities. Both parties periodically tried to enroll members in the other. In *Zuckman*, former Democrats enrolled in the American Labor Party and filled out and signed a questionnaire, indicating support for American Labor Party principles. Subsequent to this approximately 1000 of these enrollees were challenged and expelled. On appeal, the Appellate Division affirmed the expulsion as to many of those expelled, but reversed as to others. Where expulsions were upheld the Appellate Division found that substantial evidence of disagreement with American Labor Party policies was marshalled by the challenging parties and that the burden of rebutting the presumption raised by the signing of the questionnaire had been met. Where reversals were ordered, that burden had not been met.

Plaintiffs-appellees' reliance on the New York cases is, therefore, misplaced. New York courts have not affirmed expulsions absent substantial evidence which would overcome the presumption raised by the signing of the questionnaire. Such evidence has not been introduced in the instant case. Without such evidence, an abuse of the requirement of bona fides in section 302 may not be found.

Democratic Party of the Virgin Islands.[34] Defendants-appellants admit that the facts do show that they desired to become members of the Democratic Party to offer resistance to the then existing leadership of that Party. Attorney for the plaintiffs-appellees, in his opening statement at trial before the District Court indicated the basis for defendants' action, when he stated that they felt they were more "Democrat" than the Donkey group, the Virgin Islands regular Democrats. However, the failure to show a conflict in policies between the Democratic Party and the defendants and the resulting abuse of section 302's good faith enrollment pledge therefrom, preclude the drawing of adverse inferences from defendants' admitted actions. The showing that certain vestiges of Unity Party organization may have remained[35] does not satisfactorily prove that the Unity Party never went out of existence, and was attempting a coup within the Democratic Party.

The charges of conspiracy are further blunted both by the events surrounding the party enrollment and the realities of the primary campaign. During the enrollment period both the Mortar and Pestle group and the Donkey group were actively and widely encouraging membership in the Democratic Party. It would be absurd to say that the Donkey solicitations, as a general matter, were geared

34. Plaintiffs-appellees have charged that the defendants-appellants have sought to foist one-party rule upon the Virgin Islands by taking over the reins of the Democratic Party, thus eliminating all effective opposition to Unity Party control of the government. Such an unsupported contention requires little discussion. Suffice it to say that both the support given the Mortar and Pestle slate in the primary by the Democratic electorate and the creation of plaintiffs' own "independent" slate of senatorial candidates to run in the November 3, 1964 general election, demonstrates that the Virgin Islands is not about to unwittingly succumb to one-party rule.

35. See findings of fact at note 11 *supra*.

towards the acquisition of good faith enrollees, while the Mortar and Pestle group, in which the twenty-two defendants were active, merely encouraged those elements whose membership was to be in bad faith for the purpose of supporting a Unity Party takeover of the Democratic Party. It is clear that general pleas for party membership were made by both factions, the result being an enrollment of over 10,000 citizens of the Virgin Islands in the Democratic Party of the Virgin Islands.

The realities of the primary election also militate against plaintiffs-appellants' charge of conspiracy. Though we do not find the result of the primary election dispositive of the issues in this litigation, the victory won by the Mortar and Pestle slate certainly is a persuasive indication that extensive popular support existed for a Democratic Party under the leadership of the Mortar and Pestle group. The symbols of the competing factions were well known and, contrary to the unsupported contention by the plaintiffs-appellees, probably minimized the confusion attendant on this first primary election. This Court feels that, if anything is to be indicated by the response given the Mortar and Pestle group by the duly enrolled membership of the Democratic Party of the Virgin Islands, a mandate has been given them whatever the basis of leadership or policy on which it stands. Absent the showing of firm reasons to set aside such a popular reaction to their candidacy, the results of the primary election must stand and the judicial restraint upon their power to act must be dissolved.

As to the counterclaims of the appellants which the District Court denies in Civil No. 260, the case is replete with evidence that the appellees have continued to assert

that they still constitute the only legal Territorial Committee of the Democratic Party of the Virgin Islands. Hence the District Court erred in denying the appellants injunctive relief. Indeed, necessity for restoring the status quo requires that appellants be granted the injunctions they requested.

The judgments of the District Court of the Virgin Islands entered on July 20th, 1964 in Civil No. 158 and in Civil No. 260 in favor of the appellees and denying the counterclaims of the appellants are reversed, and the orders and injunctions contained in the said judgments are vacated. The cases are remanded to the District Court with instructions to issue the injunctions requested by the appellants in their counterclaims and for any other action consistent with this opinion.

FREEDMAN, *Circuit Judge*, CONCURRING.

I concur in the result. For if we should undertake to review the bona fides of the elector's statement of support of the policies of the Democratic Party, then, as Judge Forman's opinion convincingly demonstrates, there is no evidence to support the charge.

I have serious doubt, however, that we need reach the factual question. The elusive conception of motive is enrolling as a member of a political party and the difficult problem of determining the principles of a political party at a given time lead me to believe that we must not accept the role of making such decisions unless there is clear statutory requirement that we do so. The New York cases to which we are referred[1] are plainly based in specific

1. *Zuckman* v. *Donahue*, 80 N. Y. S. 2d 698 (1948), affirmed without opinion, 298 N. Y. 627, 81 N.E. 2d 371 (1948); *In re. Mendelsohn*, 99 N. Y. S. 2d 438 (1950), affirmed without opinion, 301 N. Y. 670, 98 N.E. 2d 254 (1950).

statutory provisions.[2] The New York statute confers on the chairman of the county committee of the party in which the voter enrolls the power to determine whether he is "not in sympathy with the principles of such party" and specifically authorizes judicial review of such determination.[3] There is no such provision in the Virgin Islands Election Code. All that §302 requires is that an elector "shall be eligible to enroll as a member of the recognized party of his or her choice, by subscribing to support the policies of said party." This means a statement of intention to support in the future the policies of the party. It does not require past affiliation or even a declaration of past support of the policies of the party. The courts have found it difficult enough to deal with present intention as to future conduct in simple cases of contract or tort. I do not believe that it is desirable for the courts to seek to determine motive or intention and the bona fides of belief in political questions such as this, where the wide spectrum of local, national and international problems, varied and shifting as they are in their inherent nature, are involved. The intention of the Legislature to impose this responsibility on the courts does not appear. Indeed, a contrary intention may be gleaned from §108(b) of the Election Code. This section was added to the Code on February 20, 1963. Although it is not effective until after the general election in 1964, it was in existence at the time the electors were enrolled as members of the Democratic Party. It was amended on April 2, 1964, after these events. The existence of §108(b) in 1963 shows the legislative intention that a certificate of the Supervisor

2. New York Election Law, § 332(2).

3. *Ibid.*

of Elections was to be conclusive that an elector was properly enrolled. The 1964 amendment makes this even clearer by providing that the declaration by the elector that he "certifies in writing that he subscribes to the principles of the party with which he is enrolled at the time of the hearing" requires that the petition challenging his enrollment is to be refused. These provisions are not operative until after the 1964 general election. But since there is no provision in any other part of the Election Code on the subject, I see no reason to deal with this case as if the right of judicial review existed. In short, since a writing subscribing to the policies of the party, after the 1964 election, *must* result in the rejection of the challenge to the elector, I do not believe the Legislature intended that prior to 1964 the door should be open to a trial by a judge as to the sincerity with which the declaration is made.

We deal here with circumstances existing during the changeover from the former practice to that established by the new Election Code. These circumstances are unique and will not reoccur in the same form. It will be time enough to deal with similar questions if and when they arise in circumstances which require our decision. For in such a case § 108(b) will be applicable and any decision we may then make will serve as a guide in the future operation of the Election Code.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

18 V.I.C., 3A, Section 301 (i) Supp., p. 17:

(i) Any political body, which is not a political party as published by the Supervisor of Elections in subsection (g) of this section, but which has nominated candidates for the general election by nomination papers as provided by subchapter II of chapter 17 of this title, shall be deemed to be a political body within the meaning of this title, but such political body shall not be permitted to nominate its candidates or elect its party officers at primaries held under the provisions of this title. However, beginning with the year 1966 such a political body shall become a political party if at the general elections next preceding the primaries one of its candidates for election in the territory at large should poll not less than 5 per centum of the total number of valid ballots cast in the territory.

18 V.I.C. 3A, Section 344, p. 139:

344. Nomination petitions

(a) The name of no candidate shall be placed upon the official ballots of a political party to be used at any primary, unless a petition in accordance with the provisions of this section shall have been filed in his behalf. In no event shall any person's name be printed upon the official ballots of any party for the office of member of committee or other party officer, unless he is a duly registered and enrolled member of such party.

(b) Except as otherwise provided in subsection (c) of this section, the nomination of candidates for public office, or for election as members of committees and other party offices shall be made by separate nomination petitions in their behalf, in form prescribed by the Supervisor of Elections, signed by duly registered and enrolled members of such party who are qualified electors of the terri-

tory, or of the legislative district, as the case may be, within which the nomination is to be made or the election is to be held. Nomination under this subsection shall further comply with the provisions of sections 345, 346, 347, 348 and 349 of this title.

(c) A political party may at its option nominate more than two but not more than four candidates at large in such manner as its constitution, by-laws and governing rules provide. Whenever more than two candidates at large are nominated by a political party, its territorial committee shall certify to the Supervisor of Elections the names of such candidates at large by nomination petition on forms prescribed by the Supervisor of Elections and signed by the chairman and secretary of the territorial committee of the party. The nomination shall set forth:

(1) the rules of the political party with respect to the nomination of candidates for such office;

(2) that a quorum of the committee, caucus, or convention authorized by party rules to make such nomination duly convened;

(3) that the persons present were duly appointed or elected members of such committee, caucus or convention; and

(4) the name, residence and occupation of the candidates at large duly nominated at such meeting.

Opposite or under the names of such candidates at large shall be printed in small but legible type on the ballots to be used in the primary the words "(nominated by party organization)".

(d) Whenever more than one nomination petition is filed on behalf of a person for the same office, his name shall be printed once only on the primary ballot.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 746

JOSEPH ALEXANDER, ET AL., *Petitioners*,

v.

HENRITA TODMAN, ET AL., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

ALFRED L. SCANLAN,
734-15th Street, N.W.,
Washington 5, D.C

ANTOINE JOSEPH,
46 Company Street.
Christiansted,
St. Croix, Virgin Islands.

DAVID B. ISBELL,
Union Trust Building,
Washington 5, D.C.

JOHN L. MADURO,
33 Droningens Gade,
Charlotte Amalie,
St. Thomas, Virgin Islands.

JAMES BOUGH.
Emancipation.
Charlotte Amalie,
St. Thomas, Virgin Islands.

Attorneys for Respondents

Of Counsel:

SHEA & GARDNER,
734-15th Street, N.W.,
Washington 5, D.C.

COVINGTON & BURLING,
Union Trust Building,
Washington 5, D.C.

January 4, 1965.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

These cases were consolidated for trial in the District Court for the Virgin Islands, and were treated together in the opinion and judgment of the United States Court of Appeals for the Third Circuit, whose opinion has been officially reported in 337 F. 2d 962.

Jurisdiction

The District Court for the Virgin Islands had jurisdiction by virtue of Section 22 of the Virgin Islands Organic Act of 1954, 68 Stat. 506 (1954), 48 U.S.C. 1612.

Jurisdiction of the United States Court of Appeals for the Third Circuit over the two appeals in these cases rested on 28 U.S.C. 1291.

Question Presented

Did the Court of Appeals for the Third Circuit incorrectly decide that the District Court for the Virgin Islands had erred in holding that the respondents (with the exception of the Supervisor of Elections), by enrolling in the Democratic Party, and by nominating, supporting, voting and running as candidates in the Democratic primary for election as members of the Territorial Committee of the Democratic Party of the Virgin Islands, had engaged in an unlawful conspiracy?

Statutory Provisions Involved

In addition to the statutory provisions listed in the petition for *certiorari*, several other provisions of the Virgin Islands Election Code are relevant. These are: 18 V.I. Code 108(b), 303, 344, 411(a), 412, and 629. These statutory provisions are set out at pp. A-50, A-42, A-53, A-55, and A-54, respectively, in the appendix printed with the petition for *certiorari*.

Statement

A. *The Basic Facts.* Respondents do not accept the statement set forth at pp. 5 through 9 of the petition for *certiorari*. They prefer to rest upon the fair and full statement of facts in the opinion of the Court of Appeals.[1]

B. *Pertinent Developments Since the Appeals Were Docketed.* Since these appeals were first docketed in the

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[1] See pp. A-39 through A-44 of the appendix printed with petition for certiorari, and 337 F. 2d 962, 963-67.

Third Circuit Court of Appeals in early August 1964, certain events have occurred which bear on the issues involved and which, because of their public character, we suggest the Court may consider by way of judicial notice. First, delegates and alternates chosen by the respondents' group within the Democratic Party of the Virgin Islands were seated in the National Convention of the Democratic Party, held in Atlantic City, New Jersey, August 23-27, 1964, despite a formal challenge to their credentials unsuccessfully pressed before the Credentials Committee by a group of delegates and alternates sponsored by the petitioners. *Philadelphia Evening Bulletin*, August 26, 1964, p. B-2; *Virgin Island Daily News*, August 25, 1964, p. 1; *Virgin Islands Home Journal*, August 25, 1964, p. 3. Second, the Democratic National Committeeman for the Virgin Islands chosen by the respondents' group was accepted by the Democratic National Committee, while a candidate put forward by the petitioners was refused a seat as a member of the new National Committee selected at the conclusion of the 1964 Democratic Convention. *Virgin Islands Daily News*, August 29, 1964, p. 1; *Virgin Islands Home Journal*, August 30, 1964, p. 3. Finally, developments relating to the October 1, 1964 primary election of the Democratic Party of the Virgin Islands and to the general election of November 3, 1964 are relevant. The petitioners' faction filed candidates for the primary election, but then withdrew them. *Virgin Islands Home Journal*, September 9, 1964, pp. 1, 4. This group of candidates then announced that they would run as members of an independent slate in the general election of November 3, 1964, in opposition to the candidates selected by the Democratic Party of the Virgin Islands represented by the respondents' group. *Virgin Islands Daily News*, September 14, 1964, pp. 1, 14. In the general election, six Democratic candidates and five

of the independent candidates sponsored by the petitioners' group were elected to the legislature. *Virgin Islands Daily News,* November 4, 1964, pp. 1-2; *Virgin Islands Home Journal,* November 4, 1964, p. 3.

Argument

1. It is no basis for the grant of *certiorari* that this Court has not decided the precise question involved in this case. The issue is not one of federal law but of territorial law only.

2. Even if it were true that the Court of Appeals' decision reached a result at variance with certain decisions of the courts of New York, such divergence of opinion among local jurisdictions would furnish no basis for the grant of *certiorari.* However, the fact is, as the careful opinion of the Court of Appeals notes,[2] the petitioners are mistaken in arguing that the decision below is contrary to decisions on similar facts rendered by the courts of New York. The New York decisions were based on specific statutory provisions of New York's election law which find no counterpart in the Virgin Islands Election Code.[3] The New York cases, therefore, are neither analogous nor controlling. Nor are they in conflict with the decision of the Court of Appeals in this case. Under New York law, the power which the statutes give the courts of New York to determine questions of voter or candidate eligibility is strictly confined to the categories enumerated in the statute. *Application of O'Shaughnessy,* 32 Misc. 2d 850, 223 N.Y. Supp. 2d 403, affirmed, 223 N.Y. 2d 408; see also *Werbel* v. *Gernstein,* 191 Misc. 275, 78 N.Y. Supp. 2d 440, 443. In this respect, therefore, both the Third Circuit in this

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[2] See p. A-64, f.n. 33 of the appendix printed with the petition for certiorari.

[3] New York Election Law, § 332(2).

case, and the New York decisions also follow the unanimous view of the state courts in maintaining that no court, election official, or party officer can impose, or insist on, any other tests or conditions for the enrollment of voters and the selection of primary nominees beyond, or contrary to, those specified in applicable state election laws. 29 C.J.S. 156; *Love* v. *Wilcox*, 119 Texas 256, 28 S.W. 2d 515; *Trosclair* v. *Parish Democratic Committee*, 120 La. 620, 45 So. 526, 153 A.L.R. 646; *Briscoe* v. *Boyle*, (Tex. Civ. App.), 286 S.W. 275; *In Re Gilhuly*, 124 Conn. 271, 199 A. 436; and see also, Mitau, *Judicial Determination of Political Party Organization Autonomy*, 42 Minn. L.R. 245, 257 (1957).

3. The Court of Appeals has correctly decided these cases. However, even if it had not, there is simply no truth to petitioners' claim that the decision of the Court of Appeals "would apply to all similar situations . . . in the continental United States."[4] The decision of the Third Circuit regarding the Virgin Islands Code has no compelling force beyond the Virgin Islands.

4. Respondents perhaps should pass over the rhetoric of the petitioners in arguing that the decision of the Court of Appeals "could lead to the establishment of a one party system of government in the United States, as it has in the Virgin Islands." However, taking the lesser exaggeration first, we refer the Court to the Third Circuit's opinion which points out, quite correctly, the narrow balance of political alignment which currently prevails in the Virgin Islands.[5] In addition, we also call the Court's attention to the fact that in the general election of November 3, 1964, the Democratic Party, with which respondents are

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[4] Petition for certiorari, p. 11.

[5] See p. 66, f.n. 34 of the appendix printed with the petition for certiorari.

now affiliated, was able to secure only a bare majority of one in the eleven member Virgin Islands Legislature. *Virgin Islands Daily News*, November 4, 1964, p. 1. A six to five legislative division is hardly "one party government." Finally, and most importantly, the argument is irrelevant. So far as the United States is concerned, the history of our country shows that a considerable number of states, at various times, have had a tradition of one party rule. This may not be the best form of government; but that is a question for the electorate and not for the courts.

5. The opinion of the Third Circuit speaks for itself in demonstrating that the ultimate facts or conclusions which the District Court for the Virgin Islands drew from the evidence found no factual support in the record. *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 44.

6. An illegal conspiracy requires that there be an agreement or combination to achieve an unlawful objective or to achieve a lawful objective through unlawful means. *Texas Power Co.* v. *T.V.A.*, 306 U.S. 118, 147; 15 C.J.S. 996. Both the respondents' objective, i.e., gaining control of the leadership of the Democratic Party of the Virgin Islands, and the means used by them to achieve that objective, i.e., enrolling in the Democratic Party and soliciting the votes of the electorate of the Virgin Islands, were lawful.

7. Finally, respondents' legitimate claims to leadership of the Democratic Party of the Virgin Islands, through their majority in membership on the Territorial Committee of that Party, twice have been confirmed by the voters of the Virgin Islands. This occurred first in the primary election of November 1, 1963, when sixteen of their candidates were elected to the twenty-two member Territorial Committee of the Democratic Party of the Virgin Islands, and next in the general election of November 3, 1964, when six of their candi-

dates were elected to the eleven member Virgin Islands Legislature. In a very practical sense, therefore, the political issues which once underlay the legal questions arising in this litigation are currently moot. *Mills* v. *Green*, 159 U.S. 651, 653; 6 Moore's Federal Practice, 3074.

Conclusion

It is therefore respectfully urged that the petition for writ of certiorari should be denied.

Respectfully submitted,

ALFRED L. SCANLAN,
734-15th Street, N.W.,
Washington 5, D.C.

ANTOINE JOSEPH,
46 Company Street,
Christiansted,
St. Croix, Virgin Islands.

DAVID B. ISBELL,
Union Trust Building,
Washington 5, D.C.

JOHN L. MADURO,
33 Droningens Gade,
Charlotte Amalie,
St. Thomas, Virgin Islands.

JAMES BOUGH,
Emancipation,
Charlotte Amalie,
St. Thomas, Virgin Islands.

Attorneys for Respondents

Of Counsel:

SHEA & GARDNER,
734-15th Street, N.W.,
Washington 5, D.C.

COVINGTON & BURLING,
Union Trust Building,
Washington 5, D.C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 746

JOSEPH ALEXANDER, *et al.*,
Petitioners,

v.

HENRITA TODMAN, *et al.*,
Respondents.

REPLY BRIEF OF PETITIONERS

WILLIAM H. D. COX
Attorney for the Petitioners
20 Crystal Gade
St. Thomas, Virgin Islands

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ARGUMENT

The statement of the question presented in the Respondents' brief omits therefrom the crux of the entire case. It fails to include in the question the fact found by the trial judge that the Respondents, other than the Supervisor of Elections, were members of an opposing party who enrolled in the Democratic Party, and through various means brought pressure to bear upon the other members of their party, the Unity Party, to enroll in the Democratic Party for the sole purpose, by this concerted action, of taking over the control of the Democratic Party of the Virgin Islands, ousting the membership of that party, and establishing a one party government in the Virgin Islands.

We refer the Court to their publication of May 4, 1963, which is set forth in some detail in Judge Gordon's opinion on pages A-26, A-27, A-28 and A-29 of the Petitioners' brief.

In their argument they attempt to prevent this Court from granting writ of *certiorari* by various specious arguments:

1. They set forth the action of the Credentials Committee at the Democratic National Convention. It is a novel theory that a body who did not hear the case, and is a non-continuing body, can, by their decision, supplant the courts of the United States.

This applies with equal force to their argument that they accepted the National Committeeman and National Committeewoman supported by the Respondents over the National Committeeman and National Committeewoman sponsored by the Petitioners.

2. As to their argument that the Petitioners withdrew their candidates from the October 1, 1964 primary, they fail to state that the Supervisor of Elections refused to enter them as Democratic Party candidates unless and until the Petitioners obtained the consent of the Chairman and Secretary of the Respondent group to their being listed as Democrats. If the Petitioners had sought the approval of the Chairman and Secretary of the Respondent group to be listed as Democrats in the primary, then their argument would have been that the Petitioners recognized this group as the true Democratic Party of the Virgin Islands. Viewed in this light, these candidates for the primary were not withdrawn. The Supervisor of Elections never accepted them.

They were forced to run as independent candidates sponsored by a group known as the Donkey Democrats

which, if the decision of the Third Circuit is upheld, will pass out of existence.

As to the portion of their brief entitled, "ARGUMENT", we have the following to say:

1. Appeals are taken from the District Court of the Virgin Islands to the United States courts. Under this judicial framework, the Supreme Court of the United States is the court of highest jurisdiction to which an appeal involving the Virgin Islands can be made. Consequently, the Supreme Court of the United States is passing upon territorial law by reason of the appellate procedure for cases arising in the Virgin Islands.

2. The argument that the New York law and the Virgin Islands law are not similar in their provisions is incorrect. The Virgin Islands Code provides that an elector is eligible to enroll as a member of a recognized party of his or her choice by subscribing to support the policies of the said party, whereas the New York statutes give to the elector the same right by expressing themselves in general sympathy with the policies of the party and pledging themselves to vote for some of its candidates at the next general election. If anything, the Virgin Islands Code provides a stronger criterion than does the New York Code. The only difference is in the means of procedure.

The cases cited under this argument by the Respondents do not meet the issue in this case. They merely hold that because a person is an enrolled member of one party and supports and votes for a candidate of another party in a general election, this is no cause for forfeiting that person's enrollment in that particular party.

3. We reiterate that the decision of the Third Circuit, if permitted to stand as applied to the situation existing

in this case, would place above the law a concerted enrollment of members of one party in an opposing party, their voting for party officers of their choice and thereby taking over control of the opposing party.

4. The mere fact that there was almost an even balance between the Unity Party of the Respondents and the Democratic Party of the Petitioners is no answer to this case. The real questions still remain as they are stated in the petition for *certiorari*.

The mere fact that in spite of the difficulties presented, the Petitioners were able to elect five of eleven senators as independents is no answer. It has been pointed out that the election of November 3, 1964, under the decision of the Third Circuit, is the last one in which the Petitioners' candidates can use the designation of Democrats. If that decision stands, then the political structure and party which the Petitioners have built up over a period of years has been destroyed and in future elections there will not be the organized opposition to the Respondents' candidates that there was in the 1964 general election.

5. There was substantial evidence to support each conclusion of Judge Walter A. Gordon of the District Court of the Virgin Islands. A reading of the plan which the Respondents published in their newsletter, and which they followed, standing alone would support the Judge's decision. However, there was other very substantial evidence in the case which supported the trial Judge's decision.

6. A political party's chief asset is the loyalty of its members. Outsiders belonging to an opposing political party do not have the right to take that asset from a political party by taking over the control of that party. It is illegal for them to do so; and any concerted action

to accomplish this unlawful objective constitutes conspiracy. The protection given to political parties is well set forth in the following cases:

Mele v. *Ryder,* 188 N.Y.S. 2d, 440;
Sheldrick Association v. *Blaike Regular Democratic Organization, Inc.,* 134 N.Y.S. 2d, 218;
Plonski v. *Flynn,* 222 N.Y.S. 2d, 543.

7. The issue of the fraud, collusion and conspiracy of the Respondents has never been submitted to the voters. The fact that some of the candidates of the Respondents as well as some of the candidates of the Petitioners are popular with the voters is of no consequence in this case.

Fraud, collusion and conspiracy are legal matters and whether these exist is a question for the court and not for the voters. To hold that it was a question for the voters, particularly where those issues were not before the public, would permit the public to overrule the decisions of the courts, including decisions of the Supreme Court of the United States.

CONCLUSION

It is, therefore, respectfully urged that the petition for a writ of *certiorari* be granted.

Respectfully submitted,

WILLIAM H. D. COX
Attorney for the Petitioners

January 15, 1965.